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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 UNITED STATES OF AMERICA, : 15-CR-637(KAM)
5 Plaintiff, :
6 -against- : United States Courthouse
7 EVAN GREEBEL, : Brooklyn, New York
8 Defendant. : November 15, 2017
9 : 9:00 o'clock a.m.
10 - - - - - X

11 TRANSCRIPT OF TRIAL
12 BEFORE THE HONORABLE KIYO A. MATSUMOTO
13 UNITED STATES DISTRICT JUDGE, and a jury.

14 APPEARANCES:

15 For the Government: BRIDGET M. ROHDE
16 Acting United States Attorney
17 BY: ALIXANDRA E. SMITH
18 DAVID PITLUCK
19 DAVID K. KESSLER
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23 For the Defendant: GIBSON DUNN & CRUTCHER
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CMH

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RMR

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1 (In open court; outside the presence of the jury.)

2 THE COURT: So, the parties have discussed the
3 progress of the trial and what's to come and I think it's
4 important for us to at some point soon advise the jurors as to
5 the projected length of the trial. It is important for me as
6 well because I do have a trial starting December 11th and I
7 have jurors scheduled to come in for selection so if the
8 parties would kindly let me know, I would appreciate it.

9 MS. DENERSTEIN: Your Honor, Mr. Pitluck and I spoke
10 very briefly this morning and discussed the plan. He told me
11 what the government's plan is which I'm sure he'll convey to
12 you in a moment, but I think from the defense perspective,
13 because we just spoke about it this morning, we need a little
14 more time to confer about how much time we may need or not
15 need so I just didn't want you to have a false impression.

16 MR. PITLUCK: I would never relay a false
17 impression.

18 MS. DENERSTEIN: No, not you.

19 THE COURT: That's fine. I just want to give the
20 jurors as accurate a prediction as we can at this point.

21 MR. PITLUCK: Yes.

22 So, Judge, I think our position, we'll stop trying
23 to be ambitious and now just based on the length of the trial
24 so far and discussions, and we have been speaking regularly
25 about schedule and length, I think, Judge, a safe estimate for

1 our case to be concluded is the Tuesday after Thanksgiving. I
2 know the Court is away that Wednesday, Thursday, Friday. We
3 are very hopeful that we can finish by then, if not sooner.
4 We have Monday, Tuesday, Wednesday this week. We have
5 Mr. Aselage to recall.

6 Obviously, a lot depends on what we can do over the
7 next three days, but the big variable, as the Court is aware
8 from the previous trial, is our case agent who was on the
9 stand for quite a while in the last trial and it's really just
10 a matter of how many discussions or side bars we have over
11 particular documents on either side. We're amenable in the
12 interest of expediting things to try and confront those issues
13 in advance, through, you know, we've turned over our exhibits.
14 There are issues. I think, you know, that we would expect
15 some reciprocity to understand the universe of the documents
16 or the potential universe of documents we're going to
17 introduce because, obviously, if we have an argument with the
18 case agent on cross about introducing exhibits through the
19 case agent and as everyone, a hearsay exception, not offered
20 for the truth, if we do that at side bar for every document,
21 Judge, we can be here a long time.

22 So, I'm putting this on the record. We're amenable
23 to that and discussed it generally with the defense, but that
24 in our mind is really the X factor as to when we can get done.
25 If we can really expedite that, it's possible we can be done

1 sooner. If it's really a disaster, it's possible we won't be
2 done by that Tuesday. So, that's where we kind of are. I
3 wish I could give the Court a more firm date, but we do have
4 quite a few witnesses left and it's hard to predict how long
5 it would take.

6 MR. BRODSKY: Your Honor, I do remember this coming
7 up and observing from Shkreli's trial. I believe the
8 government in that trial decided not to give the identity of
9 the particular exhibits.

10 MS. SMITH: You're wrong. We gave a list of our
11 exhibits. Defense gave a list.

12 MR. BRODSKY: Oh, great. So, if they're willing to
13 give us a list of the exhibits --

14 THE COURT: Would you be willing to reciprocate as
15 Mr. Brafman did on behalf of Mr. Shkreli so that we could
16 streamline this process?

17 MR. BRODSKY: Would you give us -- this is the first
18 time the government has proposed this proposal to us. Would
19 you give us the day to think about it and discuss it with our
20 client?

21 THE COURT: Yes.

22 MR. BRODSKY: Thank you, Your Honor.

23 MR. PITLUCK: Judge, that's the best we can do.
24 Obviously, it gets a little more certain after every night,
25 unfortunately, it also gets longer after every night, but

1 that's our best thinking after thinking it through the last
2 few days.

3 THE COURT: I think after the government rests, the
4 defense is going to make an oral Rule 29 motion. Is that
5 right?

6 MR. MASTRO: Yes, Your Honor.

7 THE COURT: How long do you think that would take?
8 I just want to build in time.

9 MR. MASTRO: I'm trying to be as brief as I can be,
10 but I don't think that will be a long application, Your Honor.
11 I think it's something I can do, you know, in less than an
12 hour certainly.

13 THE COURT: All right. And then we should set aside
14 a date for a charging conference as well. If the defense did
15 put on a case, I would, you know, obviously schedule it at
16 some point towards the end of the defense case.

17 I would like to schedule it because I do have a lot
18 of commitments in the evening with Bar-related matters and
19 committee work, etc., and I've been moving things around, not
20 to mention my own medical appointments which I need to get
21 done before the end of the year. They're not minor
22 appointments but important appointments and I had to take them
23 off the calendar and it's going to affect me financially and
24 it's going to affect me, perhaps not, hopefully not, but I do
25 want my medical appointments to get back on schedule. So,

1 please give me an idea as much as you can.

2 MR. MASTRO: Certainly.

3 THE COURT: I understand the defense doesn't want to
4 say or doesn't know right now about their case, but I think it
5 is important to schedule and have an idea not just for myself,
6 obviously, but for the 18 men and women who have given up
7 multiple weeks of their lives to be here. So, please, try to
8 let us know by the end of today where you stand. I'd like
9 some schedules, please.

10 MR. PITLUCK: And, Judge, we're obviously amenable
11 to evenings, whatever the Court's schedule. None of us are
12 sleeping anyway so we're happy to try to come in earlier,
13 shorten breaks, stay later, whatever the Court is amenable to
14 doing. We also want to finish.

15 THE COURT: Well, maybe the charging conference will
16 have to be in the evening, but it's an imposition also on the
17 court reporters which they've been very wonderful and generous
18 and supportive of this effort, but I, I think there are a lot
19 of moving parts.

20 Would the charging conference the first week of
21 December be a good time to hold that?

22 MR. KESSLER: That's fine. And we're happy to do
23 that in the evening if that works for the court reporters and
24 everyone else.

25 MR. MASTRO: Certainly, Your Honor, that sounds

1 reasonable to us during the first full week of December, yes.

2 THE COURT: In that week, I do have other
3 conferences at 5:30 that I've, pretrial conferences that I've
4 put over that, for 5:30 that week one night and then we have
5 some Bar functions that I have to participate in on two of the
6 other nights but perhaps Tuesday.

7 So, I am going to set a hard date for any additional
8 submissions for the instructions. That will be the Tuesday
9 after Thanksgiving, November 28th. Any additional
10 supplemental instructions must be in by the 28th.

11 MR. MASTRO: Your Honor?

12 THE COURT: Yes.

13 MR. MASTRO: I know everyone's schedules are
14 incredibly tight and, you know, Mr. Brodsky can be here on the
15 5th. I will not be able to be here on the 5th, that court
16 date, or during that evening. I have to make a longstanding
17 emergency trip -- "emergency" is not the right word -- I have
18 a longstanding commitment that I have to be out of town on
19 that Tuesday and I'm going to take a red eye back so I'll only
20 miss the minimum amount of court time, but if that's the only
21 time the scheduling conference can be, we understand. I'd
22 just obviously like to be here for the scheduling, for the
23 charging conference, if possible, and I will not be able to be
24 here on the Monday and Tuesday nights because I'm flying out,
25 flying back in, like, a 24-hour trip.

1 THE COURT: Well, all right. I have commitments.
2 You are not going to be here anyway on Monday, but I have an
3 evening pretrial conference at 5:30 Monday, I have two Bar,
4 judicial and Bar related functions on Wednesday and Thursday
5 and that leaves Friday, Friday, the 8th.

6 MR. KESSLER: So, Your Honor, we wouldn't object to
7 Friday, the 8th, obviously if that is a, the time that makes
8 sense to have the charging conference, but my sense is if the
9 defense is not putting on a case, then --

10 THE COURT: We can do it during the day?

11 MR. MASTRO: Yes.

12 MR. KESSLER: We can do it many days earlier in the
13 day.

14 THE COURT: That's why it would be nice to know what
15 you are doing.

16 MR. KESSLER: Because I don't think we want to be in
17 the position where we're waiting for a closing or summation
18 for several days because of the charging conference.

19 MR. MASTRO: We will be conferring on that, Your
20 Honor, and get back to you.

21 THE COURT: I have packed every lunch hour that week
22 with something, with other conferences.

23 MR. KESSLER: Your Honor, are all the jurors here or
24 are we waiting?

25 THE COURT: We are waiting for Number Five.

1 MR. KESSLER: So, we have one quick thing we can try
2 to resolve just from the previous night.

3 MR. BRODSKY: Yes.

4 MR. KESSLER: I believe at the end of Mr. Su's
5 cross, there were a number of defense agreements and we put
6 the admission of those on pause to look to see if there was a
7 cover e-mail or a complete document. There is a complete
8 document. We all found the same document.

9 MR. BRODSKY: He's not on it though, Your Honor, and
10 I think that since he's not on the e-mail from Evan Greebel to
11 Marek Biestek and then Marek Biestek forwarding to Mr. Greebel
12 the signed purchase agreements, he testified, I think, that he
13 had seen them in the office. He was in the office on
14 December 12, 2012 at this time. You know, it's just difficult
15 to give him an e-mail that, he's never seen it, he can't
16 comment on it and, you know, that's why we did it this way.

17 THE COURT: Oh, so you did that that way on purpose?

18 MR. BRODSKY: No, I didn't do it that way on
19 purpose, Your Honor.

20 THE COURT: Okay.

21 MR. BRODSKY: I assumed, of course, like any other
22 document, there must be an e-mail when I was preparing and
23 people gave me the purchase agreements. I asked my team to
24 get me the purchase agreements that were signed which is what
25 they did.

1 THE COURT: All right.

2 MR. BRODSKY: But looking at it now, I don't think
3 that -- I thought it's a wise decision not for us to put in a
4 cover e-mail that he's not seeing. I'll give you a copy.

5 THE COURT: It's says just, Attached please find?

6 MR. BRODSKY: Yes, Your Honor.

7 THE COURT: Thank you.

8 MR. BRODSKY: And I'm handing up for the Court for
9 the record DX 5496 for identification which is a marked
10 defense exhibit.

11 THE COURT: Well, you marked it and not had the
12 e-mail attached or was it marked as a different --

13 MR. BRODSKY: Marked as a different document.

14 THE COURT: Okay. The documents we put in were
15 Defense Exhibit 111-131 through 137.

16 MR. KESSLER: Your Honor, we don't see the harm in
17 having the cover e-mail and also given how many questions I
18 think both sides have been asking about, you know, the date on
19 the document versus the date of the document, it seems helpful
20 because these documents themselves do not actually have
21 handwritten dates for the date of the purchase agreement and
22 there may be multiple versions of the purchase agreement.
23 Just to have the anchoring document is helpful. I mean, it
24 also seems a little pointless not to put it in now but put it
25 in later.

1 MR. BRODSKY: It's fine. We'll put it in, Your
2 Honor.

3 THE COURT: Okay.

4 MR. BRODSKY: We'll make this easy.

5 THE COURT: So will you --

6 MR. BRODSKY: What I'll do is I'll offer it without
7 objection and --

8 THE COURT: Under the original number and you'll
9 attach --

10 MR. BRODSKY: Under this number.

11 THE COURT: -- the purchase agreement or you will
12 offer it under 5496 and attach the purchase agreements?

13 MR. BRODSKY: You know what I'll do? I'll renumber
14 this now. I'll renumber this now to 111-131-1 and this way,
15 they'll track together if that makes sense.

16 MR. KESSLER: And that's fine.

17 THE COURT: All right. Thank you.

18 Would you mind refreshing me on what the fight was
19 in the Shkreli case with the agent's exhibits? I'm just
20 trying to remember. I'm sorry. I can go back and look at the
21 transcript.

22 MS. SMITH: No, that's okay. Obviously, there were
23 a couple of different issues.

24 One was to what extent the settlement agreements for
25 the witness who didn't testify would come in and related

1 documents and there was a bunch of discussions about what
2 documents constitute co-conspirator statements and then
3 defense counsel had a bunch of hearsay objections. And if you
4 remember, we did a whole briefing which we, hopefully, we can
5 avoid this time, but part of the agent's testimony, we
6 provided the full list that we thought we could potentially
7 introduce through the case agent because it is a, you know, a
8 substantial list and then defense counsel raised objections.
9 They did not, I believe, put in that many documents through
10 the case agent, but we were trying to sort this out ahead of
11 time.

12 So, to the extent there were documents, those were
13 resolved prior to the case agent taking the stand. Obviously,
14 there would still be objections to questions and testimony but
15 in terms of which documents were coming in, we tried to kind
16 of get that sorted out ahead of time.

17 THE COURT: So, the case agent is projected to
18 testify next week, is that right?

19 MS. SMITH: I mean, that's certainly the hope at the
20 very least to start him next week. We'll see how it goes, but
21 if you remember last time, because there were so many
22 documents, the direct took a substantial amount of time and I
23 anticipate that defense here will want to put in any number of
24 documents through the case agent potentially and so that the
25 cross could take a while just in terms of the documents going

1 in. So, that's kind of why we wanted to see if we could flush
2 it out ahead of time.

3 Also, unlike kind of more a fact witness, the case
4 agent, the cross is not sort of the same kind of traditional
5 cross. I mean, I think we've seen with many of the witnesses
6 the defense putting in documents affirmatively, not for
7 impeachment or for cross material, and, certainly, with the
8 case agent, I would expect that the defense may want to put in
9 documents affirmatively with the case agent that are not truly
10 cross. And we, to the extent we can get that also ahead of
11 time, I think that would just save a lot of side bars.

12 THE COURT: All right. So, should we set dates by
13 which the parties will define the issues and if they want to
14 make submissions, they may, otherwise I will assume there is
15 not going to be an issue or dispute?

16 MR. BRODSKY: Your Honor, respectfully, I heard the
17 government. I would like to confer with our team and our
18 client.

19 Traditionally, Your Honor, it is the government
20 setting forth the position that they would like to speed
21 things up which I totally understand. They would like the
22 presentation of their evidence through the agent to be
23 efficient and productive without side bars which I completely
24 understand.

25 THE COURT: Well, in my discretion, I can suspend

1 side bars and not have them anymore.

2 MR. BRODSKY: Understood.

3 THE COURT: That is what many of my colleagues do
4 when side bars are dragging down the trial and taking up
5 needless time.

6 MR. BRODSKY: Understood, Your Honor, but one of the
7 most important parts of, as we've seen through our
8 cross-examinations, one of the most important really the only
9 mechanism for a defendant accused of a crime who doesn't have
10 any civil discovery rights to take depositions or to discover
11 evidence other than through very narrow trial subpoenas, which
12 pursuant to Nixon, as Your Honor knows, are extremely narrow,
13 the only true mechanism of uncovering the truth is through
14 cross-examination.

15 What the government is asking here, and I do want to
16 talk to our team and our client about it, is a request that we
17 foreshadow to them and provide them in advance the documents
18 we intend to cross-examine the FBI agent about and that is a
19 very significant request. That is not something that we
20 should take as a very easy way to say, oh, sure, we'll do
21 that. I understand the government's request to move things
22 along, but as Your Honor has seen from our cross-examinations,
23 we believe we bring out things that the government has never
24 brought out and that's part of our defense and to provide the
25 government an advance showing of how we intend to

1 cross-examine the FBI agent with our documents is a very, very
2 serious request. In my view, it's unprecedented in terms of
3 disclosure by the defense. Maybe Mr. Brafman decided that's
4 okay for him, but in the trials that I've participated in, I
5 haven't seen it done.

6 So, I do think it's important for us to confer with
7 our client and to talk to our team and to decide whether or
8 not we want to give up a very significant right which is the
9 right to cross-examine a witness without the government
10 knowing which documents we're going to use in advance.

11 MS. SMITH: And, Your Honor, just, again, to be
12 clear, to the extent that Mr. Brodsky wants to use documents
13 for impeachment purposes for the case agent or to
14 cross-examine the case agent, they're certainly not asking for
15 those documents. We briefed this previously.

16 To the extent the defense is affirmatively advancing
17 its case through the case agent, doing things that they would
18 be, putting documents in for their own purposes where they
19 would have to call the case agent in their own case to do this
20 or a paralegal or something along those lines and they're
21 choosing, instead, to use the government witness affirmatively
22 to put in documents, those are the documents we think we
23 should receive ahead of time.

24 If Mr. Brodsky wants to confront the case agent or
25 show them documents or cross on certain things, we're

1 certainly not asking for those. We're simply asking for the
2 documents that the defense would otherwise put in on their own
3 case and to the extent they're not willing to preview them for
4 us, we think it's inappropriate to then use the case agent for
5 their own case, we've had this come up with a number of other
6 witnesses as well, especially, if we were going to take the
7 step to narrow and flush out issues ahead of time and reveal
8 our strategy which we think is prudent given the number of the
9 documents the case agent is going to be putting in and the
10 potential for delay and we really do not want to keep the jury
11 longer than they have.

12 So, we'll have to think about it. Mr. Brodsky is
13 not willing to provide any documents that he's putting in
14 affirmatively but that is the distinction we're drawing.
15 We're certainly not asking for cross-examination or
16 impeachment material.

17 THE COURT: So, you are saying you might otherwise
18 be willing to allow documents to be admitted through cross of
19 the case agent that would otherwise only be admissible in the
20 defense case?

21 MS. SMITH: Exactly, to the extent they're putting
22 them in affirmatively. Certainly, we would like to move the
23 trial as well. So, if it's within the context of what the
24 case agent is, will be putting documents in for and, as you
25 know, it's pretty broad because it will be primarily, you

1 know, or many of them will be statements of the defendant or a
2 co-conspirator and given what I imagine the defense may want
3 to put in in terms of statements of their own client to the
4 extent that they can, it will probably fall in that same
5 period. And we're just kind of raising that, you know,
6 raising that issue.

7 THE COURT: All right. Thank you.

8 All right. The jurors are all here. May we bring
9 them in?

10 And Mr. Su is here, Mr. Burke?

11 MR. BURKE: Yes.

12 THE COURT: We can put him on the stand, if you
13 like, so that he will be on the stand. Thank you.

14 (Pause.)

15 THE COURT: Did you have any other exhibits that you
16 wanted to put on the witness desk so we can expedite it? You
17 don't have to walk back and forth. I don't know whether you
18 were going to revisit any exhibits already in evidence. I
19 think part of the time lost is the walk and we lose the
20 ability to always hear you clearly.

21 MR. BRODSKY: Right. Part of the issue, Your Honor,
22 is I often, on cross-examination, I'm not exactly sure what
23 the witness is going to say and I have more documents here
24 than I use.

25 THE COURT: Okay. I am not saying that you should

1 give him things you haven't used yet, but if you feel
2 comfortable to do that, you can leave them in a binder on the
3 desk or if there are documents that you want to revisit from
4 yesterday and they're admitted, I would put them up there as
5 well.

6 MR. BRODSKY: Okay. Thank you, Your Honor.

7 THE COURT: It saves the walking.

8 MR. BRODSKY: It happens to be my only exercise.

9 THE COURT: Yes. It's sad, isn't it?

10 MR. BRODSKY: My family thinks it's a good thing.

11 (Jury enters.)

12 THE COURT: All jurors are present.

13 Good morning, members of the jury.

14 Mr. Su, you are still under oath.

15 And, Mr. Brodsky, you may resume your cross.

16 Have a seat.

17 MR. BRODSKY: Thank you, Your Honor.

18 (Continued on next page.)

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Su - cross - Brodsky

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1 JACKSON SU ,

2 the witness, having been previously duly sworn,

3 resumed as follows:

4 CROSS-EXAMINATION (Continued)

5 BY MR. BRODSKY:

6 Q Good morning Mr. Su.

7 A Good morning.

8 Q We left off, Mr. Su, with the stock purchase agreements
9 DX 111-131 through 137, and I put before you -- you said you
10 had seen those in the office, they being the stock purchase
11 agreements for the purchase of Fearnow shares, you had seen
12 them in the office in December 2012?

13 A In some shape or form, yes.

14 Q And I have before you DX 111-131-1 which is an e-mail
15 exchange you're not on, correct?

16 A Correct.

17 Q And that's an e-mail exchange between Evan Greebel to
18 Marek Biestek on December 12, 2012?

19 A Yes.

20 Q And that Mr. Biestek forwards to Mr. Greebel signed stock
21 purchase agreements for several people, correct?

22 A That's what I see, yes, that's what the e-mail says.

23 MR. BRODSKY: Your Honor, we offer DX 111-131-1 and
24 then DX 111-131 through 137.

25 MR. KESSLER: No objection with the understanding

Su - cross - Brodsky

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1 that they're all from the same e-mail.

2 THE COURT: All right. We will receive DX 111-131-1
3 and 111-131 through 137.

4 (So marked.)

5 Q Great. And Mr. Su, on Mr. Greebel's e-mail to
6 Mr. Biestek on December 12, 2012, I don't know if we have an
7 electronic copy, but does it not state that, Mr. Su: Marek,
8 attached are purchase agreements for the acquisition of the
9 Fearnow stock?

10 Did you understand, sir, that the people who were
11 going to have the opportunity to receive Fearnow stock had to
12 purchase the stock?

13 A That was my understanding.

14 Q And you wanted that opportunity to purchase Fearnow
15 shares, correct?

16 A That was discussed between me and Martin when he came
17 into my office like I said yesterday.

18 Q Yes, and you --

19 A If it was offered to me, I would have signed, I would
20 have participated in it.

21 Q If it was offered to you, you would have accepted it and
22 you would have bought the shares?

23 A Sure.

24 Q And had you bought the shares, it was your hope that, as
25 you used the words yesterday, it was a lottery ticket which,

Su - cross - Brodsky

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1 correct, you hoped it would be a lottery ticket?

2 A It would be a lottery ticket. Whether it increased,
3 decreased, it was a chance option.

4 Q Because the shares were at a deeply discounted price,
5 right? Did you remember the price at which they were being
6 offered?

7 A No.

8 Q And it was a lottery ticket because, had Retrophin
9 succeeded and after going public, the shares could be worth a
10 lot of money, right?

11 A It could have.

12 Q And that's certainly what you were -- you were hoping to
13 get the shares to buy them and then to profit one day if
14 Retrophin succeeded, correct?

15 A If it was offered to me.

16 Q If it was offered. And on December 12, 2012, Mr. Greebel
17 asks Mr. Biestek, correct, to provide these stock purchase
18 agreements to Andrew Vaino, correct?

19 A That's what this e-mail says.

20 Q Ron Tilles?

21 A Yes.

22 Q Kevin Mulleady?

23 A Yes.

24 Q Tim Pierotti?

25 A Yes.

Su - cross - Brodsky

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1 Q And Tom Fernandez?

2 A Yes.

3 Q And then in -- great. And then in response, Mr. Biestek
4 forwards signed stock purchase agreements, correct?

5 A Yes.

6 Q Okay. Let's take a look at the stock purchase agreements
7 that are forwarded. Let's take a look at DX 111-136 as an
8 example.

9 So this is a purchase agreement, correct?

10 A That's what it reads, yes.

11 Q And this is for -- it says dated as of December 11, 2012,
12 right?

13 A Yes.

14 Q We talk about the "as of" dates, right, what that means?

15 A Yes.

16 Q And it's between Troy Fearnow, the seller, and Andrew
17 Vaino, the purchaser, correct?

18 A Yes.

19 Q And the seller, it says, is a stockholder of Desert
20 Gateway, correct, in the "whereas" clause?

21 A He's the seller, yes.

22 Q And the second "whereas" clause says the seller -- which
23 is Troy Fearnow, correct?

24 A Yes.

25 Q -- desires to sell 300,000 shares of the common stock par

Su - cross - Brodsky

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1 value, .0001 per share, right?

2 A Yes.

3 Q So that in paragraph one, it says that the seller is
4 selling the 300,000 shares for \$300 in the aggregate, right?

5 A Yes.

6 Q Now, you understood at this time, I think you had said at
7 some point Mr. Huang had to take money out of his own pocket
8 to help fund the royalty payment, the final royalty payment
9 for the Ligand license in 2012, right?

10 A Yes.

11 Q And in your words, Retrophin was running on fumes, right?

12 A Yes.

13 Q And so that this was a lottery ticket of, you know, an
14 extraordinary lottery ticket in the sense of 2012, the
15 likelihood that Retrophin was going to succeed was not very
16 clear, correct?

17 MR. KESSLER: Objection to the speculation.

18 THE COURT: Well, he can testify as to his
19 assessment at the time what he believed.

20 A Can you repeat the question, please?

21 Q Mr. Su, in December of 2012, you, being the chief
22 operating officer of Retrophin LLC, you understood that the
23 likelihood of Retrophin succeeding was very low?

24 A I didn't have an opinion.

25 (Continued on next page.)

1 BY MR. BRODSKY:

2 Q Okay. And is it fair to say yesterday you said you had
3 two conversations with Mr. Shkreli about getting the Fearnow
4 shares, right?

5 A Yes.

6 Q You didn't convey what Mr. Shkreli said to you about his
7 -- well, withdrawn.

8 You dismissed his statements relating to his plan,
9 right? According to you he made statements regarding a plan
10 and you dismissed them.

11 A Are you talking about -- referring to the plan for
12 allocation of Fearnow stock and then having people share in
13 that profit?

14 Q Yes, sell the shares and then split the profits.

15 A I dismissed it, just like everything else.

16 Q That's the reason why you didn't tell Mr. Aselage about
17 it, because dismissed you it, in December of 2012?

18 A I don't recall whether I told him or not.

19 Q Let's look at your e-mail, Defendant's Exhibit 111-117 in
20 evidence. If we can put that up. This is Defendant's Exhibit
21 111 -- I'm sorry. I must have given you the wrong number.
22 Let me get you the right number.

23 MR. BRODSKY: One moment, your Honor.

24 (Pause.)

25 Q 111-18?

1 And so you e-mailed -- Mr. Su, you e-mailed
2 Mr. Aselage and copied Mr. Huang and December 4, 2012 and told
3 them about the Fearnow shares, right.

4 A Yes.

5 Q And this was after one of your conversations with
6 Mr. Shkreli where Mr. Shkreli told you about some plan to sell
7 the Fearnow shares and split the profit?

8 MR. KESSLER: Objection, misstates the testimony
9 about the time.

10 MR. BRODSKY: No. It doesn't. I'm asking him the
11 question.

12 THE COURT: I think that the question may have
13 misstated the timing. The dates on 111-18 and 111-131-1.

14 Q I showed the capitalization table of December 3, 2012,
15 right?

16 A That was yesterday you showed me that, yes.

17 Q And that was the capitalization table on December 3,
18 2012, when Mr. Shkreli under the capitalization table was
19 going to receive 1,075,000 shares of Fearnow, right?

20 A Yes.

21 Q And that prompted you, correct me if I'm wrong -- but
22 that's what prompted you to have a conversation or you had a
23 conversation shortly thereafter with Mr. Shkreli about
24 Mr. Shkreli's apparent plan to sell these shares and split the
25 profits?

1 A I didn't have it. He came to me and he just told me
2 about this plan. I don't know when the timing was.

3 Q You don't remember the timing?

4 A I don't know the what the time was.

5 Q It could have been before or after this e-mail?

6 A It could have been before or after this e-mail.

7 Q If there was after this e-mail you certainly didn't tell
8 Mr. Aselage?

9 A If it was before, again, I don't know when the timing of
10 that conversation was. If the conversation was before
11 December 4, it's not on this e-mail; if it is after, again, I
12 don't know the timing of the conversation.

13 Q Mr. Su, you know a lot about on December 4, 2012, you
14 know a lot about the Fearnow shares, don't you?

15 A I read the note about the Fearnow shares. So, it's
16 exactly what I read. That's how much I knew about it.

17 Q You knew there was a note that converted the 2.5 million
18 trade able shares, right?

19 A Yes.

20 Q On December 3 you get the capitalization table, right?

21 A Yes.

22 Q You see that Mr. Shkreli is going to get some Fearnow
23 shares, right?

24 A Yes.

25 Q You then go look in the office for the note?

1 A No. It was part of the due diligence we had been doing
2 on the shell, when we were looking at Desert Gateway, the
3 shell.

4 Q I see. So you knew about Fearnow before December 4,
5 correct?

6 A I knew about the note.

7 Q You knew about the note. And then the first time you
8 learned Mr. Shkreli is going to get 1,075,000 shares is
9 December 3?

10 A When that cap table was sent to me. I guess in and
11 around that time.

12 Q You talk here about the ownership part, you're talking
13 about the capitalization table?

14 A Yes.

15 Q Yesterday you didn't remember but today you do remember
16 the ownership part is about the capitalization table?

17 A The capitalization table is about ownership of the entire
18 company.

19 Q You remember you're complaining here on the ownership
20 part is something of a surprise to you, when you say the
21 ownership part, you mean because Mr. Shkreli is going to be
22 getting the opportunity to purchase 1,075,000 shares, right?

23 A Again, like I said yesterday, I don't know what that was
24 referencing yesterday as I look back.

25 Q And then when it says the conversion ratio, do you know

1 what that's referencing?

2 A There was some type of conversion ratio between when --
3 this should be when the company went from a private company to
4 a public company.

5 Q Right. So you had a direct line of communication to
6 Mr. Aselage, correct?

7 A Yes, I sent him the e-mail.

8 Q He was the chief executive officer at the time?

9 A December 4, yes, he was.

10 Q That's why he's asking you questions about the finances
11 and you're giving him responses, right?

12 A Yes.

13 Q And at no time did you ever write to Mr. Aselage, ever,
14 December 2012, January 2013, February 2013, March 2013, any
15 time in 2013 about some plan by Mr. Shkreli relating to the
16 Fearnow shares, right?

17 A Sorry. Can you repeat that question? There was a lot of
18 dates.

19 Q I'll slow it down. December 2012, did you ever inform
20 Mr. Aselage about some plan by Mr. Shkreli to sell the Fearnow
21 shares?

22 A Did I inform Steve Aselage about Fearnow stock being sold
23 -- the control of the shares?

24 Q You testified Mr. Shkreli came to you with a plan to sell
25 the shares and split the profits, you remember that?

1 A Yes.

2 Q Did you tell that to Mr. Aselage in December 2012?

3 A I don't know if I had that conversation with him.

4 Q He's the CEO of the company and on the board of
5 directors, correct?

6 MR. KESSLER: Objection to form.

7 THE COURT: All right. Overruled.

8 A He is the CEO of the company, yes.

9 Q And if you're going to complain about something
10 Mr. Shkreli is doing in December of 2012, isn't he the person
11 to go to?

12 A I wasn't complaining. I think I was informing him in
13 this e-mail chain and at the same time is he the person to go
14 to? Again Martin Shkreli is -- has always been the
15 controller of Retrophin. So even though Steve Aselage was the
16 CEO by name and the director, everybody knew that it was still
17 Martin's company. It was Martin.

18 Q My question is not that. My question is: If you're
19 going to complain about Mr. Shkreli about something he's doing
20 and you're not going to Mr. Shkreli to complain to Mr. Shkreli
21 about what he's doing, you're going to go to Mr. Aselage,
22 right?

23 A I would inform Steve Aselage, yes.

24 Q And did you inform Mr. Aselage in December of 2012 about
25 your complaint relating to Mr. Shkreli, any complaint related

1 to Mr. Shkreli and Fearnow shares?

2 MR. KESSLER: Objection to the statement that he had
3 a complaint.

4 THE COURT: I think you should rephrase without the
5 word complaint.

6 MR. BRODSKY: I'll rephrase.

7 Q You don't remember, Mr. Su, ever going to Mr. Aselage in
8 December of 2012 -- wait until I'm done with the question,
9 please?

10 You don't remember going to Mr. Aselage in December
11 2012, at any time in December 2012, and saying to him,
12 Mr. Shkreli told me about some plan to sell the Fearnow shares
13 and split the profits, right?

14 A I don't recall having that conversation.

15 Q You can't point us to a single e-mail to Mr. Aselage
16 giving him this information, correct?

17 A I wrote a letter to the board of directors.

18 Q What the date of that letter?

19 A In 2013.

20 Q What month, what date?

21 A 2013, first quarter of 2013. I don't remember. After I
22 left.

23 Q You addressed it to who at the board of directors?

24 A I addressed it to the board of directors, handed it my
25 attorney at the time for the appointment agreement, asked him

1 to hand it up to the board of directors.

2 Q And your attorney didn't do it?

3 A He didn't do it.

4 Q I see. We're going to get to your attorney. This is the
5 same attorney with the arbitration?

6 A This was from my appointment arbitration.

7 Q We're going to get back to him in a few minutes?

8 In 2012, December 2012, you can't point us to an
9 e-mail or a document, right, where you told Mr. Aselage?

10 A I don't recall whether I had a conversation with Steve
11 Aselage or an e-mail or anything regarding the Fearnow stock
12 allocation.

13 Q You're certain, sir, you certainly never told Mr. Greebel
14 about Mr. Shkreli's -- some plan Mr. Shkreli had in
15 December 2012 to sell some shares and split the profits,
16 correct?

17 MR. KESSLER: Objection to the form. Told him
18 December 2012 or never told him about the plan?

19 MR. BRODSKY: I thought my question was clear. I'll
20 rephrase it, your Honor.

21 Q Mr. Su, in December 2012 did you ever tell -- you
22 certainly never told Mr. Greebel in December 2012 about some
23 plan by Mr. Shkreli to sell some Fearnow shares and split the
24 profits, right?

25 A I don't recall having a that conversation with him.

1 Q You can't point to us an e-mail or a document where you
2 told him, correct?

3 A Correct.

4 Q Now, let's talk about -- can we put up GX 111-35 A in
5 evidence. You were asked questions about this nine hundred
6 thousand dollar loan, correct?

7 A The promissory note.

8 Q The promissory note, correct?

9 A Yes.

10 Q And you answered some of those questions relating to this
11 note and the equity investment, right?

12 A Yes.

13 Q So you testified the equity investment from MSMB
14 Healthcare of \$900,000 into Retrophin LLC was reclassified
15 into a note, correct?

16 A Yes.

17 Q In November 2012, right?

18 A Yes.

19 Q Isn't it fair to say, sir, that in May of 2012 -- we'll
20 talk a little bit about this later this morning -- but in May
21 of 2012, four or five months into your job as chief operating
22 officer of Retrophin LLC, the private company, you filed a
23 whistleblower complaint against MSMB, right?

24 A Correct.

25 Q And you knew that by filing a whistleblower complaint you

1 could get a percentage of any return or any damages or any --
2 you know -- fines or money obtained by the SEC, correct?

3 A That is not what crossed my mind when I filed that
4 complaint.

5 MR. BRODSKY: Your Honor, move to strike. That
6 doesn't answer my question.

7 THE COURT: You can try to rephrase it. I think it
8 is responsive. But if you don't like the response, you want
9 to strike it, you can rephrase the question and see what else
10 you get.

11 Q Mr. Su, yes or no, you knew when you filed a
12 whistleblower complaint you could get a percentage of whatever
13 fees or whatever money or whatever property or anything of
14 value the SEC obtained, correct?

15 A That is not what crossed my mind when I filed the
16 complaint.

17 Q At the time you filed the whistleblower complaint -- you
18 know it's called a whistleblower complaint, right?

19 A I went to the SEC website --

20 Q Yes or no, sir, did you know it was a whistleblower
21 complaint?

22 A I went to the website on the SEC and that's where it
23 directed me to file an on-line complaint.

24 Q And you had been in the securities industry since 1998,
25 correct?

1 A Prior to that I did some internships, '95, '96.

2 Q You had been in the securities industry since 1996 and
3 are you telling this jury that when you filed that on the SEC
4 website you didn't understand that it was called a
5 whistleblower complaint where you could get a percentage of
6 whatever is obtained by the SEC? That's what you are saying?

7 A If you go the SEC website, it says file complaint and the
8 I just filed that complaint. It only leads you to one track.

9 Q My question, sir, is not that. I'm going to try to ask
10 you again.

11 Having been in the securities industry from 1996 to
12 May of 2012, when you filed this complaint, are you telling
13 this jury you did not know that when you filed a complaint
14 with the SEC you could get a percentage of whatever the SEC
15 obtains? Yes or no.

16 A I did not know that this specific case would or would
17 not.

18 Q But you understood, sir, you understood the concept of a
19 whistleblower complaint obtaining a percentage of the profits?
20 Yes or no.

21 A I don't know if this falls under it. I was worried about
22 the assets and if there's no money there's nothing to get.
23 That's not what crossed my mind, again.

24 Q When you wrote this complaint, you separated two columns,
25 you had something that you called what's wrong and something

1 that you called what's right?

2 A Yes.

3 Q And in the what's right column you said that MSMB
4 Healthcare, PPM, said they have the right to invest in other
5 LPs and LLCs, correct?

6 A Yes.

7 Q And you understood then that the MSMB Healthcare private
8 placement memorandum allowed MSMB Healthcare to invest, the
9 right to invest, in other LPs and LLCs, correct?

10 A That was my understanding.

11 Q And that included Retrophin LLC, correct?

12 A Yes, Retrophin, LLC was an LLC; it allowed it.

13 Q Yes. And you also said what's right here is that the
14 Retrophin, LLC agreement said Martin can do whatever he wants
15 with the funds as he sees fit, correct?

16 A Can I see the piece of paper? I want to make sure
17 that's what I said.

18 Q I'll refresh your memory. 3500-JS-7?

19 When you filed this, correct, Mr. Su, you had to do
20 it under penalty of perjury, right?

21 A Yes.

22 Q Let me direct your attention to -- if you go past page
23 eight, you'll see a chart. Just turn to that page. The
24 document is not in evidence, Mr. Su. I would just ask you to
25 read bullet point number four silently to yourself.

1 Okay. If you can put it down now aside. Would you
2 mind holding it up and putting it aside? The document is not
3 in evidence. All right.

4 Now, does that refresh your memory, sir, that you
5 told the SEC that what's right here was that the Retrophin,
6 LLC agreement said Martin can do whatever he wants with the
7 funds as sees fit.

8 A Yes.

9 Q And so, therefore, you understood that Mr. Shkreli had
10 the authority, as managing member of the MSMB Healthcare, to
11 invest \$900,000 into Retrophin, LLC, correct?

12 A Yes.

13 Q And you understood that he had the authority to
14 reclassify that as a loan, correct?

15 A Sorry. I don't know whether that gives him the legal
16 right to. I'm not a lawyer. I don't know.

17 Q You understood that Retrophin, LLC enabled Mr. Shkreli to
18 do whatever he wanted with the funds, correct? That's what
19 you said, right?

20 A That's what I understood the legal document to say.

21 Q And you understand that encompassed within doing whatever
22 you want with the funds includes the right to take out a loan,
23 right?

24 A He could take out a loan.

25 Q Right. Okay?

1 Now, in November 2012 you knew Citrin Cooperman
2 understood that the nine hundred thousand dollar investment by
3 MSMB Healthcare into Retrophin, LLC was reclassified as a
4 loan?

5 Q Correct?

6 MR. KESSLER: Objection to Mr. Su understanding.

7 THE COURT: Rephrase.

8 MR. BRODSKY: Your Honor, I'm about to prove it up.
9 I have --

10 THE COURT: I'm asking you to rephrase the question
11 that calls for an understanding of someone else's mind.

12 MR. BRODSKY: Understood.

13 Q Mr. Su, you told Citrin Cooperman in November of 2012
14 that the nine hundred thousand dollar equity investment of
15 MSMB Healthcare was reclassified into a loan, correct?

16 A Yes.

17 Q And you told them that before you ever even had a
18 conversation with Mr. Greebel, right?

19 A I don't know what the timing of that was.

20 Q You remember testifying just yesterday that the timing of
21 your conversations with Mr. Greebel were about this \$900,000
22 was approximately November 27 to November 29, 2012?

23 A The conversation I had with Evan Greebel about the loan,
24 the nine hundred thousand dollars?

25 Q Yes. When Mr. Shkreli dropped it off, right, you said

1 you had a conversation where you called him up and he didn't
2 respond to you, right?

3 A Yes.

4 Q You said it was -- you say, your testimony, Mr. Greebel
5 responded and said he hasn't paid fees so I'm not going to
6 respond, right, that's your testimony?

7 A Yes.

8 Q And so that conversation, according to your testimony,
9 you say occurred in late November, approximately November 27
10 and November 29?

11 A Okay.

12 Q All right. Then you said you spoke to him again and you
13 thought it was between about November 30 and December 1,
14 right?

15 A Yes.

16 Q So you told Citrin Cooperman about the reclassification
17 of the nine hundred thousand equity investment into a loan
18 prior to that?

19 A No. That's not the timeline. The first time I saw it
20 when Martin dropped it off on my desk, dropped it off on my
21 desk and I called Evan and he said he couldn't speak to me
22 about it. That was the first time I saw it. There was no way
23 I could give it to Citrin because I didn't have it prior.
24 That was the first time I saw it.

25 Q Right. And your testimony is -- and you were clear

1 about it -- your testimony is this occurred, the first
2 conversation in late November, right?

3 A In around November, late November.

4 Q In or around. How much flexibility are you giving
5 yourself, Mr. Su, with respect to in or around late November?

6 MR. KESSLER: Objection as to the form.

7 THE COURT: Sustained.

8 Q Mr. Su, how many days in or around late November, plus
9 days, minus days?

10 A Again, I don't know exact timing five years ago.

11 Q Yet you remember the specific conversation with
12 Mr. Greebel five years ago?

13 A I do.

14 Q That's your testimony?

15 A He made an impression on me for this specific piece of
16 paper that I thought was questionable. I went to the lawyer
17 after I received it. I asked Martin whether he talked to Evan
18 about it. He said yes, he talked to Evan about it. I called
19 Evan. He said he couldn't talk to me because of the fees.
20 Okay. He stuttered a little bit, told me he couldn't talk to
21 me because of the fees. Hung up. Couple of days later we
22 were talking about everything with this reverse merger and the
23 capital investment that investors wouldn't give us or
24 Retrophin and then he said it was okay.

25 Q Right?

1 And you can point us to an e-mail or a document or
2 writing in which that's what you wrote?

3 A Wrote what?

4 Q Where Mr. Greebel said it was okay.

5 A It was a conversation with me and another colleague and
6 he said it was okay.

7 Q Mr. Su, you said you had a concern about it. That's your
8 testimony, you had a concern about it?

9 A Yes.

10 Q You're the chief operating officer, right?

11 A Yes. That was my title, yes.

12 Q Yes. And where is the note, where is the e-mail, where
13 is any document in which you told anybody that Mr. Greebel
14 said this to you? Point to it.

15 A I don't have one.

16 Q Okay. Let's point to some documents we do have.
17 Defendant's Exhibit 111-40.

18 MR. BRODSKY: May I approach, your Honor?

19 THE COURT: Yes.

20 Q Mr. Su, let me show you Defendant's Exhibit 111-40 for
21 identification.

22 MR. BRODSKY: For the record, it's an e-mail from
23 Jackson Su, November 12, 2012, to Corey Massella and
24 Ms. Liang, subject, note.

25 We offer it, your Honor.

1 MR. KESSLER: No objection.

2 THE COURT: We receive in evidence Defendant's
3 Exhibit 111-40.

4 (So marked.)

5 Q Mr. Su, this is you, correct?

6 A Yes.

7 Q And on November 12 you sent the promissory note to
8 Mr. Massella and Ms. Liang, right?

9 A Yes.

10 Q You didn't copy Mr. Greebel, correct?

11 A No. It's not on here.

12 Q So by November 2012 you knew about the note, correct?

13 A November 2012, yes.

14 Q Isn't it true that a couple of days later Ms. Chew asked
15 you questions about it? Mr. Su, isn't it true Ms. Chew a few
16 days later asked you some questions about it?

17 A Is there an e-mail? I don't see it on here.

18 Q You don't remember?

19 A No.

20 Q This was a note you were concerned about and you don't
21 remember Ms. Chew's questions to you about it?

22 A I'm sure the accountants asked me about it.

23 Q But you don't remember?

24 A I don't remember the specifics of the questions.

25 Q Do you remember generally them asking about it?

1 A They would probably ask.

2 MR. BRODSKY: Your Honor, I move to strike the
3 probably. I'm not asking what they probably asked, your
4 Honor.

5 THE COURT: All right.

6 Do you have any recollection as to whether the
7 accountants asked you about this document, the note?

8 THE WITNESS: I do. They asked me about the note.

9 Q You generally remember now they asked you about the note?

10 A I'm sure they asked me about the note.

11 Q There's a difference, Mr. Su. Do you remember them
12 asking you about the note or are you sure they must have asked
13 you about the note?

14 A They must have asked me about the note. They would have.

15 Q You can't, sitting here, remember any conversations?

16 A I don't remember the conversation.

17 Q You don't remember the conversation because it was five
18 years ago, right?

19 A That would be correct.

20 MR. BRODSKY: Your Honor, may I approach?

21 THE COURT: Yes.

22 Q I'm showing you 111-100 for identification.

23 MR. BRODSKY: For the record, this is an e-mail
24 exchange, the top e-mail is Ms. Chew, Susan chew, November 16,
25 2012, to Jackson Su and Corey Massella. Subject re: Secured

1 promissory note.

2 We offer it, your Honor.

3 MR. KESSLER: Your Honor, we don't object. It may
4 already been in evidence under a different number. We're
5 checking that. I don't object to their being two copies.

6 THE COURT: All right. If it's already in evidence
7 do you want to put it in again?

8 MR. BRODSKY: We'll use this one and if the
9 government tells us it's in evidence as a Government's Exhibit
10 we're happy to do the Government's Exhibit.

11 MR. KESSLER: 111-14.

12 THE COURT: Is that a Defense Exhibit or
13 Government's Exhibit?

14 MR. KESSLER: Government Exhibit.

15 THE COURT: Do you want to use that designation?

16 MR. BRODSKY: I'll use the Government's Exhibit your
17 Honor.

18 THE COURT: Okay.

19 Q So if we go to the first page, Ms. Chew on November 15 is
20 saying she's unable to locate the thirty thousand dollar loan
21 from Mr. Huang and the nine hundred thousand dollar loan from
22 MSMB Healthcare, right?

23 A That's correct.

24 Q This is after you sent her the note for \$900,000,
25 correct?

1 A Yes.

2 Q And she's asking where is the bank account where the
3 money was wired into, right?

4 A Yes.

5 Q And you respond, Mr. Huang was wired money -- was wired
6 -- withdrawn.

7 Mr. Huang wired the money directly to Ligand to
8 satisfy the remaining up front royalty payment, right.

9 A Yes.

10 Q Mr. Massella said -- you didn't respond to the question
11 about the nine hundred thousand dollar loan, right?

12 A Not in that part of the e-mail.

13 Q Okay. Mr. Massella follows up and says where is the copy
14 of the wire and acknowledgment from Ligand and you said you
15 would forward it?

16 A Yes.

17 Q You said the nine hundred thousand dollars was wired into
18 2527 is the bank account?

19 A The last four digits of the bank account.

20 Q On February 3, 2012, right?

21 A Yes.

22 Q And then Ms. Chew follows up with you and says there was
23 only one nine hundred thousand transaction that came in in the
24 month of February and she lays out how MSMB Healthcare
25 purchased 22500 A units at 40 dollars which was nine hundred

1 thousand dollars and on the same day she says MSMB Healthcare
2 had a promissory note. Please let me know what happened?

3 A Yes.

4 (Continued on next page.)

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Su - cross - Brodsky

5201

1 BY MR. BRODSKY:

2 Q So you told her, right?

3 A Yes.

4 Q You told her it was reclassified.

5 A Yes.

6 Q And did you tell Ms. Chew or Mr. Massella, "I have a
7 concern about the note"?

8 This is on November 16, sir.

9 A Not in this e-mail, no.

10 Q Can you point to a document anywhere where you told
11 Mr. Massella, Ms. Chew, or anyone at Citrin Cooperman, "I have
12 a concern about the note"?

13 A As I sit here today, I can't pull out a document for you.

14 Q But you know for a fact you told them it was
15 reclassified, correct?

16 A Yes.

17 Q And isn't it true that you also informed Mr. Aslage about
18 the note?

19 A I don't recall.

20 Q Now, you also testified, I believe, about the \$200,000
21 note. The Government showed you a promissory note for
22 \$200,000; do you remember that?

23 A Yes.

24 Q And they asked you a very particular question yesterday,
25 or two days ago. They asked you if you remembered the

Su - cross - Brodsky

5202

1 \$200,000 loan in July 2012. Do you remember that question and
2 your answer?

3 A I remember I said no, I don't remember it.

4 Q Well, the question was about in July 2012.

5 MR. KESSLER: Do you have the transcript?

6 MR. BRODSKY: I don't have it, but I remember it.

7 I'm happy to have my colleague look at it while I
8 continue to ask questions.

9 THE COURT: Okay.

10 Q Mr. Su, do you remember the \$200,000 loan at all from
11 2012?

12 A It was given to me on my desk. The time frame, I don't
13 know when the time frame was.

14 Q In a prior proceeding, were you not asked about whether
15 you were aware of more than two loans?

16 In a prior proceeding did you not testify, sir, that
17 you were aware of the \$900,000 note, you were aware of
18 Mr. Wang's \$30,000 loan, and you weren't aware of any other
19 notes?

20 A Not that I could recall at that time.

21 Q So at that time, you did not remember.

22 MR. KESSLER: Object to the form.

23 Are we talking about the testimony in the prior
24 proceeding or whatever time the question in the prior
25 proceeding was referring to?

Su - cross - Brodsky

5203

1 MR. BRODSKY: I'll follow up, your Honor.

2 THE COURT: Okay. Can you rephrase the question?

3 At the time you did not remember, I think is what
4 you need to clarify, the time.

5 Q In July 2017, of this year -- sorry, withdrawn.

6 July 2017, you were in a prior proceeding under
7 sworn testimony, correct?

8 A Right.

9 Q And when you were sworn, you gave sworn testimony you did
10 not remember any other notes from 2012 other than the \$900,000
11 note and the \$30,000 note by Mr. Wang, correct?

12 A As I sat there that day, if I said that, it's true.

13 Q Let's show you the testimony.

14 MR. BRODSKY: Transcript cite 2200 Line 24 to 2201
15 Line 2.

16 Q Starting on Line 24, Page 2200 --

17 MR. BRODSKY: Your Honor, do you need a copy?

18 THE COURT: Well, are you going to read it into the
19 record? Are you planning to read it into the record?

20 MR. BRODSKY: I'm going to try to refresh his memory
21 and then read it into the record.

22 THE COURT: You can hold on to it. I trust if you
23 don't read it correctly someone will jump up.

24 MR. KESSLER: I object to this being introduced as
25 any kind of prior inconsistency.

Su - cross - Brodsky

5204

1 THE COURT: Maybe we should take a break.

2 MR. BRODSKY: I'm not introducing it yet, your
3 Honor. It depends on what he says.

4 THE COURT: You're objecting to having it read in,
5 Mr. Kessler?

6 MR. BRODSKY: I'm not reading it in yet, though.

7 MR. KESSLER: The prior question he stated his
8 testimony and the effort to read it in is improper. I start
9 at 2200 Line 1.

10 MR. BRODSKY: Your Honor, Mr. Kessler is making
11 speaking objections and is incorrect regarding what I asked
12 and incorrect regarding the testimony.

13 THE COURT: No speaking objections, Mr. Kessler or
14 anyone else.

15 Why don't you ask the question? If there is an
16 objection, Mr. Kessler will rise and say there's an objection.

17 MR. BRODSKY: Understood.

18 THE COURT: I don't know what you're going to be
19 doing with this.

20 MR. BRODSKY: I was using it to refresh his memory.

21 BY MR. BRODSKY:

22 Q Mr. Su, does that testimony in the prior proceed, Page
23 2200 Line 24 to 2201 Line 1 refresh your recollection now that
24 you testified under sworn testimony in July of 2017 that the
25 only two notes you remember from 2012 were the \$900,000 note

Su - cross - Brodsky

5205

1 and the \$30,000 note?

2 A If that's what I testified to at that time and if this
3 transcript is accurate, then that's what I remembered at that
4 time.

5 You're asking me to remember thousands of different
6 contracts sitting here today or even at the prior proceeding.
7 I just can't keep track of every single one that doesn't make
8 an impression on me.

9 Q Okay. So, if the transcript is accurate, it's not in
10 evidence, Mr. Su, in July of 2017, given that you can't keep
11 track of all transactions, you did -- you only remembered in
12 July of 2017 the \$900,000 note and the \$30,000 loan from
13 Mr. Wang, correct?

14 A Yes.

15 Q Now, let me show you 111 --

16 Well, isn't it a fact that you told Mr. Aslage about
17 the \$200,000 note?

18 A I don't remember. Can you refresh my memory, please?

19 Q Okay. Let me show you DX 111-71 for identification.

20 MR. BRODSKY: For the record, November 30, 2012,
21 e-mail from Mr. Su to Mr. Aslage; subject, payables.

22 Q Mr. Su?

23 A Yes.

24 Q Does it refresh your memory you told Mr. Aslage about the
25 \$200,000 loan?

Su - cross - Brodsky

5206

1 A The note's on there, yes.

2 Q You don't remember independently of the document?

3 A No.

4 Q Let me show you DX 111-50.

5 MR. BRODSKY: And as we're getting that out, let me
6 put back up on the board DX 111 -- I believe it was 1. If we
7 can put that the back up on the screen.

8 Is that in? That's not in evidence? It might be in
9 as a different document. Let me look.

10 MR. KESSLER: If it's not in, we don't object to it
11 being in.

12 MR. BRODSKY: I think it's in already.

13 THE COURT: Which one is in already, the -50?

14 THE COURTROOM DEPUTY: -1.

15 Q Looking up on the screen, you remember this e-mail we
16 discussed on December 4, right Mr. Su?

17 A Yes.

18 Q And you said in the third paragraph: I spoke with Evan
19 about the \$900,000 note.

20 Do you see that?

21 A Yes.

22 Q So, where in there do you say Mr. Greebel said it's okay,
23 the reclassification?

24 A It's not in there.

25 Q This was after the second conversation you had with

Su - cross - Brodsky

5207

1 Mr. Greebel, right?

2 Remember the first conversation you testified to,
3 you called him up, you got the loan, you called him up, he
4 didn't answer any questions about it, right?

5 A Yes.

6 Q And here, he spoke to you about it?

7 A He spoke to me, yes.

8 Q So this has to be after the second conversation, right?

9 A After which second conversation?

10 Q You said you had two conversations about with Mr. Greebel
11 about \$900,000 loan, correct?

12 A Yes.

13 Q So, this is after the second conversation, correct?

14 A I don't know when this is. So, again, my timeline, if
15 you're asking me about this \$900,000 note and my recollection
16 of it, again, in terms of time, date, I don't know what the
17 date is.

18 Q Mr. Su, follow me --

19 A I'm telling you I got a piece of paper from Martin
20 dropped off at my desk --

21 MR. BRODSKY: Your Honor, move to strike because
22 this is not responsive.

23 THE COURT: Just try to listen to the question and
24 answer as best you can.

25 Q Mr. Su, during your direct testimony, you said you had

Su - cross - Brodsky

5208

1 two conversations with Mr. Greebel; correct, yes or no?

2 A Correct.

3 Q About the \$900,000 note, correct?

4 A Yes.

5 Q The first conversation, he didn't answer questions about
6 it; correct, according to you? Yes or no, sir.

7 A Yes.

8 Q The second conversation he spoke to you about it yes or
9 no?

10 A Yes.

11 Q This is after the second conversation, correct, this
12 e-mail, December 4, 2012: I spoke with Evan about the
13 \$900,000 note.

14 Correct?

15 A Yes.

16 Q And, sir, where in here do you say anywhere to
17 Mr. Aslage, the CEO, member of the board of directors of
18 Retrophin, LLC: Mr. Greebel said the reclassification was
19 okay.

20 A It's not on here.

21 Q And isn't it true what you say is: I spoke with Evan
22 about the \$900,000 note and he didn't sound like he knew about
23 it.

24 A That's what I thought at the time.

25 Q And then you say: He said -- and this is important,

Su - cross - Brodsky

5209

1 Mr. Su, so let's look at this.

2 "He" is Mr. Greebel, right? He said, "he" is
3 Mr. Greebel, correct?

4 A Yes.

5 Q Mr. Greebel represented to the investor attorney.

6 Now, the investor attorney at the time was somebody
7 who was representing a potential investor to put money and
8 capital into Retrophin, right?

9 A Yes.

10 Q Which one was it? Which potential investor?

11 A The investor's name was led by RA Capital and other
12 investors behind that.

13 Q And Mr. Greebel is saying he represented to RA Capital's
14 attorney that there was no one who would get paid off from the
15 money raise, which is contrary to this note. Mr. Greebel told
16 you that, right?

17 A Yes.

18 Q You didn't say that during your testimony on direct
19 examination, did you?

20 A No, I don't think that I was asked.

21 Q You were you asked about your conversation with
22 Mr. Greebel about the \$900,000 note. Did you say anything
23 about that?

24 A I believe from memory, they only highlighted -- the
25 Government only asked me about the first line. But it was

Su - cross - Brodsky

5210

1 there.

2 Q And then Mr. Su, it's: Mr. Greebel expressed that once
3 the investors learn of it, it might be a show stopper.

4 Meaning once the investors learned about the
5 \$900,000 note, you were telling Mr. Aslage Mr. Greebel's view
6 was this is going to end the deal, right?

7 A Yes.

8 Q And doesn't Mr. Greebel tell you and Mr. Wang, according
9 to you, to disclose it?

10 A Exactly. Everything that was said there at that time,
11 what I wrote, is the truth at that time, yes.

12 Q Now, it says: Mr. Greebel suggested George --

13 That's George Wang.

14 A Yes.

15 Q -- and you should bring that up with him.

16 Meaning the investor attorney, correct?

17 A I don't know who "him" is referencing.

18 Q You wrote it Mr. Su. That's your words, correct?

19 A That is my words, yes.

20 Q Okay. So, when you said "he" suggested George and I,
21 you're saying Mr. Greebel suggested George Wang and you,
22 Mr. Su, bring that up to him.

23 The "him" is the investor attorney, correct?

24 A I don't know who I'm referencing, either Martin, investor
25 attorney. I don't know who "him" is. I don't talk to --

Su - cross - Brodsky

5211

1 Q Where is Martin Shkreli referenced in that paragraph?

2 MR. KESSLER: I object to the form.

3 And it's more convenient for Mr. Brodsky to use the
4 microphone.

5 MR. BRODSKY: Sometimes I like to go to the board to
6 look at it.

7 MR. KESSLER: It's hard to hear with the noise
8 coming this way.

9 THE COURT: I think we can certainly hear him from
10 over there.

11 MR. BRODSKY: I'm in an excited state, your Honor.

12 THE COURT: He said earlier he's having trouble
13 reading it. So, he can step closer.

14 There's also a screen behind you and -- there's one
15 big one behind you and also a smaller one. But as long as
16 week hear you, I'm going to allow you some latitude.

17 MR. BRODSKY: Thank you, your Honor.

18 Q Mr. Su, tell me in that paragraph where you reference
19 Mr. Shkreli.

20 A I don't know who I'm referring to when it says "him,"
21 which we will tomorrow.

22 (Pause in proceedings.)

23 A He suggested George and I should bring that up to him,
24 which we will tomorrow. If you have no objections, we'll do
25 that. I'll let you know how it goes.

Su - cross - Brodsky

5212

1 I don't remember or recall who "him" is. It's
2 either Martin, you're saying investor attorney. I don't
3 recall who "him" is in that context.

4 Q So, you don't remember sitting here today that when you
5 had the actual discussion with Mr. Greebel about the \$900,000
6 note he sounded like he didn't know about it, correct?

7 A The first time around, yes.

8 Q The first time? This time he's talking to you, sir,
9 right?

10 A Yes.

11 Q He's actually giving you content, right?

12 A Yes.

13 Q You said the first time you spoke to him, he wouldn't
14 speak to you at all because of legal fees, right?

15 A Correct.

16 Q So, this isn't the first time, right?

17 A This would be after that, yes.

18 Q So, after the second conversation you had with
19 Mr. Greebel, he's telling you he doesn't seem like he knows
20 about it; right, that's one, correct?

21 A That's what I said, yes.

22 Q He brings up that he's -- the investor attorney doesn't
23 know about the note, correct?

24 A Yes.

25 Q And he's suggesting to you that you and Mr. Wang better

Su - cross - Brodsky

5213

1 disclose it tomorrow, right?

2 A Yes.

3 Q And you're saying if you, Mr. Aslage, have no objections,
4 we're going to do that, right?

5 A That's what it reads.

6 Q And did you tell the investor attorney the next day?

7 A I talked to the investor attorney.

8 Q Did you tell the investor?

9 A I didn't have direct contact with investor or investor
10 attorney. That was not my role.

11 Q Did Mr. Aslage?

12 A I don't know if he did.

13 Q And Mr. Su, there's nothing wrong with Mr. Greebel
14 advising you to disclose the \$900,000 note to the prospective
15 investor, is there?

16 A I don't believe so.

17 Q In fact, isn't that the right thing to do, sir?

18 A In my mind, yes.

19 Q And prior to Mr. Greebel suggesting it, did you do it?

20 A It wasn't my role to talk to investors or investor
21 attorneys.

22 Q Did you suggest it to anybody?

23 Did you, yourself, as chief operating officer of
24 Retrophin, LLC, knowing the company was about to go public,
25 suggest to anybody that we better disclose the note to the

Su - cross - Brodsky

5214

1 prospective investors?

2 A I didn't suggest that. Not my role.

3 Q Okay. Let's talk about your role.

4 Isn't it true that in December of 2012 you sent out
5 an e-mail -- you, Mr. Su -- to Mr. Massella, to people at
6 Citrin Cooperman, to Mr. Greebel, to the people at Marcum, to
7 Mr. Shkreli assigning roles and responsibilities getting ready
8 for the Super 8K?

9 A I sent them e-mails many times. I'm not sure what
10 specifics are, if you could just refresh my memory.

11 Q This was one where you sent it out saying here's what
12 people are responsible for. That, you don't remember?

13 A I don't.

14 Q I'm going to show you two documents, then, 111-56 and
15 111-57. The first one I'm showing you, Mr. Su, is a
16 December 7, 2012, e-mail from you to a number of people;
17 subject line, Retrophin Critical Issues; DX 111-56 for
18 identification. And the second one is DX 111-57, an e-mail
19 from you to a number of people, another e-mail in the chain.

20 Do you see that, sir?

21 A Yes.

22 Q Do you see both of them?

23 A Yes.

24 MR. BRODSKY: We offer both of them, your Honor.

25 MR. KESSLER: One minute, your Honor. Sorry.

Su - cross - Brodsky

5215

1 No objection.

2 THE COURT: We receive DX 111-56 and-57.

3 (DX 111-56 and DX 111-57 so marked.)

4 Q Mr. Su, that's you on December 7 --

5 MR. BRODSKY: If we blow up the top part.

6 THE COURT: This is DX 111-56 we're looking at?

7 MR. BRODSKY: Yes.

8 (Exhibit published to the jury.)

9 Q That's you, Mr. Su, to Ms. Schlecht at Marcum,
10 Mr. Massella and Ms. Chew at Citrin Cooperman, copy to Martin
11 Shkreli, Evan Greebel, and Mr. Hackett, right?

12 A Yes.

13 Q And you're saying: I will try to classify the party
14 responsible for the points below. If I misclassify a
15 responsibility, please point out the appropriate party.

16 A Right.

17 Q So, you're assigning responsibility as chief operating
18 officer of Retrophin, LLC, correct.

19 A Yes.

20 Q So, you had no responsibility to talk to prospective
21 investors, but you had the responsibility of assigning out
22 what to do.

23 A Well, it was pretty obvious when they were talking about
24 accounting, which accounting firm is doing the accounting.

25 Our accountant is Citrin, which is our legal -- sorry,

Su - cross - Brodsky

5216

1 Retrophin's legal counsel or legal firm, it's Evan. I'm just
2 telling them who the companies, the third-party vendors, that
3 we use.

4 Q Let's go to Ms. Schlecht's e-mail and your responses as
5 to who's responsible. Ms. Schlecht's e-mail was subject,
6 Retrophin critical issue: Corey, Susan, please see below the
7 critical issues identified.

8 And then you put in what's underlined, the
9 responsible party, right?

10 That's the first e-mail, DX 111-56, Mr. Su.

11 A Right, I'm just trying to --

12 Q You see --

13 A -- reconcile was it me? It's not clear to me it was
14 written by me or classified by me.

15 Q Where you say I will try to classify the party
16 responsible for the points below, are you saying that doesn't
17 mean that you actually wrote who is responsible?

18 A It's not clear to me if I actually did that or not. I'm
19 not saying I didn't do it, I'm not clear that I actually put
20 Evan, Katten Muchin, for the first point.

21 These are our vendors, so it does line up. I'm not
22 sure if I put it up there or Mariel put it up there, I don't
23 know.

24 Q Mr. Su, putting aside your recollection about whether you
25 actually classified who is responsible, let's look at what it

Su - cross - Brodsky

5217

1 says. It says: Accounting acquire analysis. What type of a
2 transaction is occurring; business combination, acquisition,
3 recapitalization transaction. Is this a check the box sell?
4 Evan and Katten Muchin.

5 Right.

6 A Yes.

7 Q The second one, complete set of financial statements with
8 footnotes, who is responsible, sir?

9 A That would be the accountants in this case --

10 Q Citrin Cooperman?

11 A Yes.

12 Q Corey Massella?

13 A Corey with Citrin Cooperman, he worked with Citrin
14 Cooperman, yes.

15 Q Complete set of financial statements with footnotes was
16 not the responsibility of Katten, anyone at Katten, correct?

17 A The financial statements would not be Katten.

18 Q Or the footnotes, sir, correct?

19 A For financial statements, I believe there's input -- from
20 my experience, there is input --

21 Q I'm asking about this e-mail, not your experience. This
22 question is about this e-mail, DX 111-56. It says complete
23 set of financial statements with footnotes.

24 A It says Corey at Citrin Cooperman, yes.

25 Q Not Evan Greebel, not Katten, correct?

Su - cross - Brodsky

5218

1 A It does not show that, correct.

2 Q And then the mapping of the old equity to the new equity
3 from the conversion of the LLC to C Corp, not Evan Greebel
4 correct?

5 A It says Corey and Citrin Cooperman.

6 Q And then number four, Revised statement of stockholder
7 equity, retroactively restated for the conversion, with backup
8 of mapping as noted above.

9 Not Evan Greebel, not Katten, correct?

10 A It says Corey and Citrin Cooperman.

11 Q Number five, Does the company retain a purchase option on
12 the incentive units? How does this affect the mapping of the
13 LLC to the C Corp?

14 That's Mr. Greebel and Katten, correct?

15 A That's what it says, yes.

16 Q Number six, How does the company determine the accounting
17 for the shares transferred from the shareholder to
18 consultants? How are these consultant services valued?

19 Please provide the consulting agreements for transfer
20 agreements. These transfers could have tax implications as
21 stock compensation for employees receiving shares. This could
22 result in the withholding tax and other obligations for the
23 company. For nonemployees receiving shares, this could result
24 in 1099 obligations of the individuals.

25 Who is responsible, sir?

Su - cross - Brodsky

5219

1 A Corey at Citrin Cooperman.

2 Q And not anyone from Katten, correct?

3 A Not from this document, no.

4 Q Number seven, There's a potential to reclassify the
5 related party receivables as a reduction of equity.

6 Do you understand what related party receivables
7 are?

8 A Yes.

9 Q They were related party transactions, correct?

10 A Yes.

11 Q Everybody was aware, everybody -- withdrawn.

12 Everybody sitting in the offices of Retrophin was
13 aware of related party transactions, correct?

14 MR. KESSLER: Objection.

15 THE COURT: Sustained.

16 Q You were aware of the related party transactions, right?

17 A I saw the accounting books, yes.

18 Q Mr. Aslage was aware of related party transactions,
19 correct?

20 MR. KESSLER: Objection.

21 THE COURT: Sustained.

22 Q You had conversation with Mr. Aslage about related party
23 transactions, did you not?

24 A Yes.

25 Q So, you understood from your conversation with Mr. Aslage

Su - cross - Brodsky

5220

1 in December 2012 that he was aware of them, correct?

2 MR. KESSLER: Objection.

3 THE COURT: Sustained. Try to rephrase.

4 Q During your conversation with Mr. Aslage in
5 December 2012, you and he discussed how they were related
6 party transactions in general, correct?

7 A Yes.

8 Q And Mr. Aslage said to you, Mr. Su, in writing, that the
9 books of Retrophin and MSMB have comingled monies, correct?

10 A Yes.

11 Q And you understood when Mr. Aslage told you that the
12 books of Retrophin and the books of MSMB had comingled monies,
13 what you understood Mr. Aslage to be saying to you is that
14 there were related party transactions and money transfers
15 going between MSMB and Retrophin, back and forth.

16 MR. KESSLER: Objection to the form.

17 THE COURT: Try to rephrase. It's compound.

18 Q You understood when Mr. Aslage said to you that there
19 were comingled monies that the money of Retrophin was mixed in
20 with the money of MSMB, correct?

21 A Yes.

22 Q And then down at the bottom, it says after number
23 seven -- well, continuing on with number seven, it says, There
24 is a potential requirement to reclassify the related party
25 receivables as a reduction of equity. Also, is there a right

Su - cross - Brodsky

5221

1 to offset the related party receivables payables.

2 Who is responsible for that, sir?

3 A It says on here Corey at Citrin Cooperman.

4 Q Not anyone from Katten, correct, according to DX 111-56?

5 A It just says Corey at Citrin.

6 Q Below that it says, I've also attached the open items
7 list with various requests for the completion of our review
8 procedures. And does it not say quote, my responsibility.

9 Doesn't that refresh your recollection, Mr. Su, that
10 that's you?

11 A My responsibility?

12 Q Yeah. You wrote my responsibility, right?

13 A My responsibility, yes, I wrote it.

14 Q Does that refresh your recollection that you were
15 assigned these responsibilities?

16 A Looking at this piece of paper, if that's -- yes.

17 Q And you said, I e-mailed the documents to Marcum and
18 Citrin, but Marcum servers kicked it back to me. Susan will
19 upload this tomorrow. Right?

20 A Yes.

21 Q So, the responsibility for doing all the various requests
22 for the completion of review procedures, all these open items,
23 was not Katten's correct.

24 A It was my responsibility to get the documents.

25 (Continued on next page.)

Su - cross - Brodsky

5222

1 BY MR. BRODSKY:

2 Q And then down at the bottom where it talks about the
3 Super 8K filing, did you not write, We will revise the text in
4 the Super 8K?

5 That's you, correct, that's you, Mr. Su?

6 A We will revise the text in the Super 8K. The "we"?

7 Q Yes, "we."

8 A We, the company, Retrophin.

9 Q You and Mr. Huang?

10 A Martin worked on it. The Super 8K was worked on by
11 Katten Muchin. Everybody worked on it.

12 Q Let's look at where it says there, We will revise the
13 text in the Super 8K.

14 When you said the "we" there, you meant you,
15 Mr. Huang and Mr. Shkreli, correct?

16 A And legal.

17 Q Well, let's go to legal.

18 A I'm sure they were involved in the Super 8K. It's a
19 legal document.

20 Q And then it says, Send it to Evan and Corey, right?

21 A Yes.

22 Q You were going to revise it and send it to Evan and Corey
23 this afternoon where they will fill in their parts, right?

24 A Right.

25 Q That's what it says?

Su - cross - Brodsky

5223

1 A That's what it says.

2 Q And then you defined the parts as, i.e., merger
3 agreement, pro forma financials, et cetera, right?

4 A Yes.

5 Q Now, in response, if we look at DX 111-57, do you see
6 Mr. Greebel says to you: Accounting treatment is not our
7 responsibility. We are not qualified to give advice on that.

8 Mr. Su?

9 A Yes.

10 Q Was there any confusion in your mind about what
11 Mr. Greebel meant when he told you, Accounting treatment is
12 not our responsibility?

13 A No.

14 Q You agree with that, right? It was not Mr. Greebel's
15 responsibility or Katten's responsibility to talk about
16 accounting treatment?

17 A No, that would be with the party Citrin Cooperman.

18 Q And in consultation with management, right?

19 A Yes.

20 Q You understood management was going to be making
21 decisions about how to, in consultation with accounting about
22 what decisions to make with respect to the financial
23 statements?

24 A Right.

25 Q That's not the responsibility of the outside counsel to

CMH

OCR

RMR

CRR

FCRR

Su - cross - Brodsky

5224

1 determine what to do, right?

2 A No, normally, no. It's not their responsibility.

3 Q Now, there's time to time where outside counsel at the
4 request of management can advocate on behalf of management for
5 positions, correct?

6 A Sorry. Can you clarify the question?

7 Q Well, as outside counsel, as management of Retrophin LLC,
8 were there times when you asked outside counsel, your lawyers
9 at Katten, to advocate for you and take positions?

10 A I never did so I don't, can't speak to anybody else.

11 Q All right. And then, Mr. Su, you respond to Mr. Greebel
12 and say: The question is is this a check-the-box shell? That
13 will give us an answer as to how we treat it as a merger or as
14 an acquisition.

15 You were looking for legal advice there, right?

16 A Yes, but that's not a question that I would come up on my
17 own but that's what I was looking for, yes.

18 Q Now, let me ask you about Kevin Mulleady.

19 In 2012, you testified you observed Mr. Shkreli and
20 Kevin Mulleady had a rocky relationship, "rocky" being my
21 word, correct?

22 A They had a hard relationship.

23 Q Sometimes Mr. Shkreli fired him and then rehired him and
24 then fired him?

25 A Yes.

Su - cross - Brodsky

5225

1 Q And then early on in 2012, for example, you learned that
2 Mr. Shkreli had actually terminated Mr. Mulleady for cause in
3 2011, right?

4 A I was told that he was on -- hired, rehired, hired,
5 rehired when I got there. Same pattern happened in 2012 as
6 well.

7 Q And my specific question is whether you remember
8 Mr. Shkreli telling you that Mr. Mulleady was fired for cause
9 in 2011?

10 A I don't recall that conversation with Martin specifically
11 for cause in 2011.

12 Q Do you remember that in March of 2012, Mr. Shkreli
13 demoted Mr. Mulleady?

14 A Yes.

15 Q And you actually encouraged Mr. Shkreli to fire him?

16 A Yes.

17 Q And Mr. Mulleady was using his title on LinkedIn as the
18 CEO of MSMB and Mr. Shkreli told him he was being demoted?

19 A I never saw LinkedIn. That's the conversation that I
20 remember that Martin told me that he was using the title CEO
21 and he wasn't the CEO.

22 Q Of MSMB, correct?

23 A I don't remember which organization, no.

24 Q Did you get it mixed up from time to time?

25 A The organizations?

Su - cross - Brodsky

5226

1 Q Yes.

2 A The companies?

3 Q Yes.

4 A No. MSMB was MSMB Healthcare, MSMB Isotope and MSMB
5 Consumer and Retrophin. Separate companies.

6 Q Separate companies. Okay. We'll get back to that. Just
7 on this though, remember that, Mr. Su, and we'll get back to
8 that in a minute.

9 Let me show you DX 111-70. Didn't you inform Citrin
10 Cooperman in November of 2012 that Mr. Mulleady's termination
11 as an employee occurred on November 13, 2012?

12 A I don't recall. If you could just refresh my memory,
13 please.

14 Q Will do.

15 (Continued on next page.)

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1 MR. BRODSKY: Why don't we show him DX 111-70 and
2 DX 111-65 and let's do DX 111-27 also.

3 THE COURT: Are these in evidence?

4 MR. BRODSKY: No, Your Honor.

5 THE COURT: Are the jurors in need of a break right
6 now or would you like to keep going while they look for these
7 exhibits?

8 THE JUROR: Yes.

9 THE COURT: If you want a break, raise your hand.

10 Okay. Why don't we take a mid-morning break.
11 Please don't talk about the case. Keep an open mind. We will
12 come back and get you in about ten minutes. You can step off
13 also, Mr. Su, and take a break.

14 (Jury exits.)

15 All right. Ten minutes?

16 MS. SMITH: Yes, Your Honor.

17 MR. PITLUCK: Thank you.

18 (Recess taken.)

19 (In open court; outside the presence of the jury.)

20 THE COURT: Hi, everybody.

21 MR. BURKE: Judge, just a discrete scheduling issue.

22 I spoke to the Judge this morning. I said I can
23 make it at 12 or 2:30. I just want to either -- I can step
24 out at 12 and make a call or maybe somebody from your chambers
25 could call and say I should be available by 2:30.

1 THE COURT: All right. Who would you like me to
2 call?

3 MR. BURKE: Judge Firetog.

4 THE COURT: We will try to contact Judge Firetog.
5 (Pause.)

6 THE COURT: There is one other issue I want to
7 remind the parties of, if I may.

8 There is a juror who is not being paid. There has
9 been a request that I speak to her employer, however, I cannot
10 do that without knowing what the projected time is. I would
11 intend to call the employer and ask that the juror be paid,
12 but I'm sure the employer will ask me how much longer this
13 juror may be indisposed. I am going to propose that if we
14 can't get a clear idea so that I can make this call on behalf
15 of the juror who hasn't been paid, that we would have to
16 consider dismissing her.

17 So, please, let me know sooner rather than later so
18 that I may give her employer an idea roughly how long we may
19 be sitting. All right? And if I don't get an answer by this
20 evening, I am going to propose that we allow this juror to be
21 dismissed. She is not being paid.

22 MR. DUBIN: Your Honor, as I understood it from this
23 morning, is the government to provide us with their most
24 conservative estimate of when the trial would end by today?

25 MR. BRODSKY: I think they did.

1 THE COURT: They did.

2 MR. BRODSKY: They said --

3 THE COURT: Tuesday after Thanksgiving.

4 MR. DUBIN: All right. We will endeavor to do the
5 same.

6 MR. BRODSKY: We will do it.

7 MR. DUBIN: We'll talk about it over lunch because
8 we don't want to lose her.

9 THE COURT: I don't think we should lose jurors but,
10 on the other hand --

11 MR. DUBIN: We understand the predicament.

12 THE COURT: Hopefully, the employer will allow her
13 to be paid. If he doesn't, we may lose her anyway.

14 All right. Thank you. Let's bring the jurors back
15 if we could, please.

16 (Jury enters.)

17 THE COURT: All jurors are present. Please have a
18 seat.

19 You may resume your cross. Mr. Brodsky.

20 MR. BRODSKY: Thank you, Your Honor.

21 May I approach?

22 THE COURT: Yes, you may.

23 (Continued on next page.)
24
25

1 BY MR. BRODSKY: (Continuing)

2 Q Showing you three documents, Mr. Su, DX 111-70, DX
3 111-127 and DX 111-65 for identification.

4 With respect to the first one, Mr. Su, DX 111-70 for
5 identification, do you recognize the e-mail exchange you had
6 with Mr. Shkreli and forwarding an e-mail exchange between
7 Mr. Shkreli and Mr. Mulleady in March of 2012?

8 A Yes.

9 Q And this was related to Mr. Mulleady's termination or
10 demotion?

11 A Yes.

12 MR. BRODSKY: We offer it, Your Honor.

13 MR. KESSLER: No objection and no objection to
14 number two.

15 MR. BRODSKY: Great. We offer DX 111-65 and
16 DX 111-127.

17 THE COURT: All right. We will admit Defense
18 Exhibits 111-65, 111-70 and 111-127.

19 (So marked.)

20 Q So if we scroll back to the last e-mail in this chain,
21 Mr. Su, this is the last e-mail.

22 So, this is Mr. Shkreli's March 18th e-mail to Kevin
23 Mulleady which he eventually forwards to you, right, Mr. Su?

24 A Yes.

25 Q And this is Mr. Shkreli e-mailing Mr. Mulleady saying: I

1 had noticed that you are listed as CEO on LinkedIn. And he
2 says: Please use the title senior vice president, investor
3 relations going forward.

4 Right?

5 A Yes.

6 Q And then Mr. Mulleady responds, correct? And that
7 response is: This creates an issue for me. It's underneath
8 right there.

9 Did you understand this to be Mr. Mulleady's
10 response?

11 A Yes.

12 Q Mr. Mulleady's saying in this e-mail: Martin, you have
13 communicated numerous times that CEO was an acceptable title.
14 It was part of my hiring negotiations. So I do not know why
15 it is being treated as a surprise now.

16 Right?

17 A Yes.

18 Q He goes on to say in the third paragraph: Must I remind
19 you that my longevity with this organization is third longest
20 among current employees and, as stated by you, I have had a
21 significant impact on its success.

22 Right?

23 A Yes.

24 Q In the last paragraph, he says: I request a meeting to
25 discuss further and would appreciate being involved in

1 decisions regarding my future with MSMB from this point
2 forward. Thank you.

3 Do you see that?

4 A Yes.

5 Q And then scrolling over, Mr. Shkreli responds to
6 Mr. Mulleady and says, among other things, correct: Kevin,
7 you were terminated for cause last year and lost the title of
8 CEO over six months ago, right?

9 A Yes.

10 Q It says: Further, your old contract is explicit that
11 your title was C00. Our executive committee, Marek, Jackson
12 and I, met and we are unanimous that this is an inappropriate
13 title for you. You are being demoted if that's the way you
14 want to accept the change in title.

15 Do you see that?

16 A Yes.

17 Q So Mr. Biestek, you and Mr. Shkreli were on the executive
18 committee, correct?

19 A Yes.

20 Q And that was the executive committee of MSMB, correct?

21 A Yes.

22 Q And this was a decision that you, Mr. Biestek and
23 Mr. Shkreli made that Mr. Mulleady was going to be demoted,
24 right?

25 A Yes.

1 Q And then it goes on to say: We have hired two new
2 employees in the last year and have restructured titles with
3 nine full-time employees --

4 A It says last week.

5 Q It says -- I'm sorry. Oh, in the last week. Thank you.
6 With nine full-time employees, parenthetical, Martin.

7 That's Martin Shkreli, right?

8 A Yes.

9 Q Marek for Marek Biestek, correct?

10 A Yes.

11 Q Tom for Tom Fernandez?

12 A Yes.

13 Q Jackson for Jackson Su, that's you?

14 A Yes.

15 Q Tim Pierotti, correct?

16 A Yes.

17 Q Andrew Vaino?

18 A Yes.

19 Q Is that Chris James?

20 A Yes.

21 Q And you. That's Mr. Mulleady, right?

22 A Yes.

23 Q And Allison Russo, right?

24 A Yes.

25 Q It says, Mr. Shkreli will become CEO and Jackson will

1 remain C00, correct?

2 A Yes.

3 Q All right. And down at the bottom, it says, in the last
4 part: I would not worry as much about a title as I would
5 about the future of MSMB and ensuring the success of the firm.
6 While we regret that your network may view your title change
7 as a demotion, that is something we cannot avoid given your
8 prior termination and the restructuring of MSMB Capital given
9 our three new senior hires.

10 Right?

11 A Yes.

12 Q And you testified you didn't understand what MSMB Capital
13 was two days ago, right?

14 A It was nothing specific. It was the company name.

15 Q It was the company name. Okay.

16 Now, Mr. Mulleady responds to Mr. Shkreli here and
17 says: Where is this coming from? I thought I was your
18 friend. You're messed up man and this is a screwed way to
19 communicate things to me.

20 Right?

21 A Yes.

22 Q And this you -- this gets forwarded from Mr. Shkreli to
23 you, right?

24 A Yes.

25 Q And you say: I don't know why he has to challenge you.

1 Right?

2 A Yes.

3 Q You were telling Mr. Shkreli: I don't know why
4 Mr. Mulleady has to challenge you. Right?

5 A Yes.

6 Q You said, Mr. Mulleady shouldn't challenge you,
7 Mr. Shkreli, your authority, right?

8 A It says: I don't know why he has challenged Martin.

9 Q What you meant is Mr. Shkreli's authority?

10 A Yes.

11 Q Mr. Shkreli made the decisions and Mr. Mulleady should
12 follow?

13 A Yes.

14 Q And then you say: You've given him a lot of
15 opportunities to turn it around. He doesn't get it.

16 Right?

17 A Yes.

18 Q And you said then: We should hang on to him till month
19 end as discussed and then terminate his consultancy with us
20 and cut ties for good.

21 Right?

22 A Yes.

23 Q You wanted him to fire Mr. Mulleady?

24 A Till month end and then terminate his consultancy with
25 us.

1 Q Mr. Mulleady's job was to talk to potential investors,
2 right?

3 A His job was fundraising to investors.

4 Q You wanted him to fire the person who's fundraising and
5 talking to investors and you weren't going to be responsible
6 for anything to do with the investments, right?

7 A Correct.

8 Q And then if we turn to DX 111-65, Ms. Chew is sending you
9 an e-mail on November 29th with respect to, and copying
10 Mr. Massella and Mr. Shkreli, employment consulting agreement,
11 right? Do you see that, Mr. Su?

12 A Yes. Hold on.

13 Q Sure. You have the hard copy too in front of you.

14 (Pause.)

15 A So, I'm sorry. Repeat your question, please?

16 Q Ms. Chew, on November 29, 2012, sends you an e-mail
17 copying Mr. Massella and Mr. Shkreli about employment
18 consulting agreement?

19 A Yes.

20 Q Asking you with respect to yours saying: You're employed
21 by MSMB Capital Management LLC, MSMB Healthcare Management
22 LLC, MSMB Isotope LLC, Surepoint Fund Management LLC,
23 Retrophin LLC and its affiliated entities, right?

24 A Yes.

25 Q And then there's a question about Mr. Aselage's start

1 date on 10/1/12, right?

2 A Yes.

3 Q And then in response, and there's a question from her:
4 What other employment consulting agreements am I missing? See
5 attached file for my comments. Right?

6 A Yes.

7 Q You respond, Mr. Su, and you say, See attached, and then
8 you say, That's how Martin paid me. But most of the work I've
9 done if not all has been for Retrophin. Right?

10 A Yes.

11 Q And then in the attachment, you provide a date of
12 termination for Mr. Mulleady as November 13, 2012, right?

13 Do you see that in the attachment? Go to the
14 attachment.

15 A Which --

16 MR. BRODSKY: Mr. Carter, it's a spreadsheet on the
17 first page.

18 Q You see where it says, Name, it has a list of employee,
19 consultant, right, you see that on the left hand, the first
20 column?

21 A Yes.

22 Q And then it has, you know, the name of the person, the
23 start date and the termination date?

24 A Yes.

25 Q You filled in the termination dates, correct?

1 A I'm not 100 percent sure of whether I did or didn't fill
2 in those termination dates.

3 Q When you wrote to Ms. Chew and said, See attached, you're
4 not just sure which ones you filled in and which ones were
5 filled in already?

6 A That's right.

7 Q And then with respect to, you know -- doesn't it have
8 three people as employees? It says, Mr. Huang, Mr. Smith and
9 Mr. Fernandez, right?

10 A Yes.

11 Q Everybody else is listed as a consultant?

12 A Yes.

13 Q Including you?

14 A Yes.

15 Q And then it has, with respect to Mr. Mulleady on number
16 16, termination date of November 13, 2012, right?

17 A That's what it reads.

18 Q And if you go to the next document, DX 111-127, keeping
19 in mind the November 13th termination date, do you see this
20 e-mail exchange where you were requesting on November 14th to
21 take Kevin Mulleady out of the system, we're going to let him
22 go today?

23 A Yes.

24 Q And then you're asking to, you know, Ms. Adams from Sage
25 Realty, Should I disable his card, and you say, Disable it

1 now?

2 A Yes.

3 Q All right. Now, Mr. Su, let me show you -- do you
4 remember informing Mr. Massella and Ms. Chew that Marek
5 Biestek was resigning on October 11, 2012?

6 A Who were the people, Marek and who?

7 Q That Marek Biestek was resigning on October 11th, had
8 resigned on October 11, 2012.

9 A No. Can you refresh my memory, please?

10 Q Sure. Let me show you two documents, Mr. Su.

11 MR. BRODSKY: May I approach?

12 THE COURT: Yes.

13 MR. BRODSKY: 111-64 for identification. 111-21 for
14 identification. The first one is what we'll discuss.

15 Q All right. Mr. Su, let me have the November 29, 2012
16 e-mail.

17 Does this refresh your recollection that you,
18 Mr. Shkreli told you Mr. Biestek was resigning on October 11,
19 2012.?

20 A According to this e-mail, that what it says.

21 Q You don't remember it independently?

22 A No.

23 Q And then DX 111-21 for identification, can you look at
24 this?

25 Do you remember this e-mail exchange with

1 Mr. Greebel in June of 2012?

2 A It's what it says. I don't remember it.

3 MR. BRODSKY: We offer DX 111-21. I'm happy to
4 offer the other one too, DX 111-64, as well.

5 MR. KESSLER: No objection.

6 THE COURT: Okay. We receive Defense Exhibits
7 111-64 and 111-21.

8 (So marked.)

9 MR. BRODSKY: And DX 111-64, if we can flash that
10 up, Mr. Carter.

11 (Continued on next page.)

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Su - cross - Brodsky

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1 BY MR. BRODSKY:

2 Q This is an e-mail we just discussed, Mr. Su, where you're
3 telling Citrin Cooperman, see correction from Marek in 2012,
4 Martin informed me he resigned, 10-11-12?

5 In this one, since it's in evidence, DX 111-64,
6 there is a column that has amount owed, a number of people
7 were owed backpay, right, Mr. Su? Do you see the column after
8 the attachment? It's on the screen if you need to look at it
9 also.

10 A It says amount owed.

11 Q A lot of people like you were owed backpay in 2012,
12 right?

13 A At times, yes.

14 Q It was not an insignificant amount of money, correct?

15 A No, it wasn't.

16 Q One of the ways in which Mr. Shkreli was able to keep
17 people incentivize to work for Retrophin was to make sure they
18 got shares, correct?

19 MR. KESSLER: Objection.

20 THE COURT: I think you can rephrase the question,
21 Mr. Brodsky, and not draw an objection.

22 Q In 2012 based on your observations of Mr. Shkreli you
23 understood he was arranging for transfers of stock to people
24 to incentivize them to work hard for Retrophin?

25 A I can't speak to that, whether he did or not. He gave me

Su - cross - Brodsky

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1 10,000 shares, an additional 15,000 shares and said I did a
2 good job. But I can't -- I don't know why he gave it to
3 other people or what the purpose of his transfers were. I
4 can't speak to that.

5 Q You know he gave you the shares, the 10,000 shares,
6 because he was trying to incentivize you, right, to continue
7 to work hard?

8 A Yes.

9 Q You know that you were owed backpay at that time?

10 A I don't know if I actually was owed backpay at that time.

11 Q And --

12 A There were periods when I was. I don't know if
13 specifically if that was.

14 Q For the 15,000 shares you say Mr. Shkreli gave you, was
15 there any memorialization of that in writing?

16 A Yes. I signed the transfer agreement with him.

17 Q Wasn't that in exchange for continuing to work hard for
18 Retrophin?

19 A Yes.

20 Q You understood he was giving you the 15,000 shares from
21 his own personal stock to incentivize you to work harder?

22 A Yes.

23 Q If you look at DX 111-21, do you remember this exchange,
24 in evidence, in June 21, 2012, if we go down to the bottom,
25 this is you informing Mr. Shkreli that a law firm was retained

Su - cross - Brodsky

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1 by the Workers Compensation board and asking why Retrophin
2 stopped paying into workers comp, right?

3 A Yes. That's what the e-mail says.

4 Q At the bottom it says should I pass there to Evan and
5 Mr. Shkreli says yes?

6 A He said yes.

7 Q Mr. Su, you said to Evan can you follow-up please and
8 Mr. Greebel responded have you guys stopped paying into
9 workers comp?

10 A Yes.

11 Q And you respond, say, everyone is on the a consultant
12 basis and gets a 1099?

13 A Yes.

14 Q And then after this you and Mr. Massella engaged in a
15 dialogue about designating everybody as a consultant so there
16 would be no pay in to workers comp?

17 A Can you refresh my memory?

18 Q You don't remember that?

19 A No.

20 Q You remember though that people stayed on as consultants,
21 correct, and got 1099s?

22 A Martin paid some people 1099s and W-2s. He assigned it.
23 I don't know why or how. It's just the way he assigned it.

24 Q That was outside your area as the chief operating
25 officer?

Su - cross - Brodsky

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1 A Yes. That responsibility wasn't mine.

2 Q You had said they were separate entities, MSMB and the
3 various entities and Retrophin, right?

4 A The ones that I had knowledge of.

5 Q Right?

6 A Yes. MSMB Healthcare, MSMB Isotope, MSMB Consumer and
7 Retrophin LLC.

8 Q You knew there was a lot of overlap between the MSMB
9 entities and Retrophin, right?

10 MR. KESSLER: Objection to form.

11 THE COURT: Rephrase, please.

12 Q You knew there was a lot of commingling of monies between
13 Retrophin and MSMB entities, right?

14 MR. KESSLER: Asked and answered.

15 THE COURT: I beg your pardon.

16 MR. KESSLER: Asked and answered.

17 THE COURT: I'll let him go one more time. You can
18 answer the question.

19 A Do you mind repeating it, please.

20 Q You knew there was a lot of commingling of monies between
21 MSMB entities and Retrophin, right?

22 A Retrophin paid for a lot of MSMB bills.

23 Q You were hired unfortunately by MSMB entities, right?

24 A On my contract.

25 Q And Retrophin paid your check?

Su - cross - Brodsky

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1 A Yes.

2 Q You knew from your own personal experience that there was
3 commingling of monies?

4 MR. KESSLER: Objection to the form, commingling.

5 THE COURT: Try to rephrase, Mr. Brodsky.

6 Q There were money transfers between entities, correct?

7 A Retrophin paid MSMB bills when it came in, don't know
8 why, and at the same time MSMB Healthcare was an investor into
9 Retrophin. So I don't what know your legal definition of
10 commingling is, so but that's what happened. I'm just telling
11 you the transaction part. That's how it happened. I was paid
12 by Retrophin. My contract says a different entity it went
13 through.

14 Q When you worked there 2012 both MSMB and Retrophin shared
15 office space, right?

16 A Yes.

17 Q There was no defined responsibility between the entities,
18 correct?

19 MR. KESSLER: Objection to the form.

20 THE COURT: Try to rephrase, Mr. Brodsky. Try to
21 define responsibilities between the entities.

22 MR. BRODSKY: Yes, your Honor. There was a reason
23 that I used that word.

24 Q Mr. Massella -- I mean Mr. Su. Sorry.

25 Is it fair to say, there was a cross between --

Su - cross - Brodsky

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1 there was no defined responsibility between MSMB and
2 Retrophin?

3 MR. KESSLER: Same objection.

4 THE COURT: Yes, sustained. Rephrase, please.

5 Q Is it fair to say that several people working for MSMB
6 and Retrophin had cross duties between the two companies?

7 A Certain people did.

8 Q And certain people who worked for both companies did not
9 have a defined responsibility as to what work they would OD
10 for one company versus the other?

11 MR. KESSLER: Objection to the form.

12 THE COURT: Try to rephrase, Mr. Brodsky.

13 MR. BRODSKY: Your Honor, my words are because of a
14 prior proceeding. I'm just going to direct your attention,
15 your Honor, to a prior proceeding, page 2135, lines ten
16 through twelve.

17 MR. KESSLER: Your Honor, my objection is just to
18 the form of in question being asked.

19 THE COURT: Yes.

20 I think if you can more closely track the language
21 of what appears at page 2135 between lines ten and twelve,
22 rather than talk about duties between the companies, focusing
23 on the individuals and what they do.

24 MR. BRODSKY: Understood, your Honor.

25 THE COURT: I think that's the problem.

Su - cross - Brodsky

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1 BY MR. BRODSKY:

2 Q MSMB and capital, Mr. Su, was the umbrella firm, correct?

3 A I actually don't know what that umbrella firm was,
4 because there were so many separate entities.

5 MR. BRODSKY: Your Honor, I would like to read the
6 transcript of a prior proceeding, 2136, lines ten through
7 twelve -- ten through fifteen.

8 (Pause.)

9 THE COURT: All right. I think that's fair.

10 Q Mr. Su, if you turn to 2136 in the prior proceeding.

11 A What page?

12 Q 2136?

13 Q Directing your attention to starting on line ten --

14 MR. KESSLER: Sorry. Your Honor, can I ask that we
15 read to line 19 pursuant to Rule 106.

16 THE COURT: Do you mind, Mr. Brodsky.

17 MR. BRODSKY: Yes, your Honor, because I'm about to
18 cross-examine him with respect to the portions relating to
19 that.

20 THE COURT: On redirect you can bring his attention
21 to the extra lines that you think ought to be read. So you
22 want lines ten through what read?

23 MR. BRODSKY: I'm going to get to the other lines,
24 too.

25 THE COURT: I'm asking what lines.

Su - cross - Brodsky

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1 MR. BRODSKY: I'm going to start with line ten.

2 THE COURT: Ten through what?

3 MR. BRODSKY: Ten through fifteen.

4 THE COURT: Thank you.

5 Q Read along with me, Mr. Su and let me know if I'm reading
6 this correctly. This was your sworn testimony, correct, at a
7 prior proceeding?

8 A Yes.

9 Q The court: Which MSMB? The witness: I don't know.
10 MSMB Capital in general, the umbrella firm.

11 "QUESTION: Just to be clear: You perceived MSMB
12 Capital to be the umbrella firm and then there were entities
13 underneath it?

14 "ANSWER: Correct."

15 Mr. Su, is it not true that there were a lot of
16 entities under MSMB.

17 A A lot of monikers for MSMB.

18 Q And you recall that MSMB Healthcare -- those entities
19 were MSMB Healthcare as a fund, MSMB Isotope as a fund, MSMB
20 Consumer as a fund and Retrophin, LLC, correct?

21 MR. KESSLER: Objection.

22 THE COURT: The form is a little complex.

23 MR. BRODSKY: Page 2124, lines eleven through
24 thirteen.

25 THE COURT: It is your use of the word fund

Su - cross - Brodsky

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1 modifying all those named entities. That's what my confusion
2 is with your question.

3 MR. BRODSKY: I'm just trying to use the words
4 exactly as used before.

5 MR. KESSLER: My objection is to the form of the
6 question.

7 THE COURT: Try to rephrase it, Mr. Brodsky.

8 BY MR. BRODSKY:

9 Q Mr. Su, in a prior proceeding you were sworn under oath,
10 were you not asked what the entities were under MSMB and did
11 you not say that you recalled MSMB Healthcare as a fund, MSMB
12 Isotope as a fund, MSMB Consumer as a fund and Retrophin LLC?

13 A Retrophin, LLC as a company, yes.

14 Q You included that as an entity under MSMB, correct?

15 A No. Well, that's not my understanding of it.

16 Q That's not your understanding today? That is your
17 testimony?

18 A Retrophin is a separate company, with separate investors.

19 MR. BRODSKY: Your Honor, I would like to read
20 transcript page 2124 lines nine through thirteen.

21 MR. KESSLER: Your Honor, I renew my application to
22 read the previous lines I referred to pursuant to Rule 106 or
23 this is not a prior inconsistent statement.

24 THE COURT: May I have that transcript back and you
25 can use your copy.

Su - cross - Brodsky

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1 MR. BRODSKY: I'll keep going, your Honor, and get
2 to that, too.

3 THE COURT: Can you just give me a minute?

4 MR. BRODSKY: Yes, your Honor.

5 THE COURT: So you want him to go to 2124? Is that
6 where we're going now?

7 MR. BRODSKY: Yes, and then I was going to go to
8 lines 19 to 21.

9 THE COURT: On page?

10 MR. BRODSKY: Same page, 2124. Then I was going to
11 go to the lines a few pages later, 2136 lines 18 to 19. I'm
12 going to get to all three.

13 THE COURT: If he's going to go to all these places,
14 some of which include the lines and pages that you wanted, do
15 you have an objection still?

16 MR. KESSLER: I am asking they all be read together
17 as they are.

18 THE COURT: I think he's going to do them
19 sequentially.

20 MR. KESSLER: Okay.

21 THE COURT: Go ahead, Mr. Brodsky.

22 Q Mr. Su, in a prior proceeding on transcript page 2124,
23 were you not asked the following questions and did you not
24 give the following sworn testimony:

25 "QUESTION: What did you learn about the entities"

Su - cross - Brodsky

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1 -- Let me start with line seven.

2 "QUESTION: So when you started working for
3 Mr. Shkreli, you just made a reference to MSMB and all its
4 entities, what did you learn about the entities?

5 "ANSWER: There were a lot of entities under MSMB.

6 "QUESTION: What were those entities?

7 "ANSWER: I recall MSMB Healthcare as a fund, MSMB
8 Isotope as a fund, MSMB Consumer as a fund and Retrophin LLC."

9 Did I read that correctly?

10 A Yes.

11 Q And then fair to say, sir, that with respect to Retrophin
12 it was a small company that was incubated by one of the funds?

13 A It was an investor in Retrophin LLC.

14 Q And your testimony is that the company of Retrophin was
15 separate from MSMB, correct?

16 A Separate, different investors, yes.

17 Q And yet they shared office space, correct?

18 A Yes.

19 Q In a prior proceeding, sir, did you also testify that the
20 entities were -- when asked whether the funds were separate
21 from Retrophin, did you say yes?

22 A Yes.

23 Q And I notice you were looking over at Mr. Kessler. Is
24 there a reason you're looking over at Mr. Kessler?

25 MR. KESSLER: Objection.

Su - cross - Brodsky

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1 THE COURT: I didn't see what he did.

2 MR. BRODSKY: I'm asking Mr. Su.

3 Q Mr. Su, were you looking over to Mr. Kessler for
4 something when responded to my question?

5 A I was not looking to him for anything.

6 Q Okay. You were just looking in that general direction?

7 THE COURT: Are we going as to start characterizing
8 what your observations are? Because I think the record is
9 going to be very contentious if this starts.

10 MR. BRODSKY: Your Honor, I'm asking the witness a
11 question where his eyes were going and where he was looking at
12 after being asked a question.

13 THE COURT: All right.

14 Q Mr. Su, is it fair to say that you understood that you
15 were using the MSMB Capital e-mail for doing Retrophin work,
16 right?

17 A That's correct.

18 Q And if we put up DX 111-21, is this an example of your
19 signature block, if we keep scrolling, where you put chief
20 operating officer of MSMB Capital?

21 A Yes, that's what appears.

22 Q So fair to say this was an e-mail in connection with
23 Retrophin work, right? Workers comp related to Retrophin?

24 A Let me just go back to the e-mails.

25 MR. KESSLER: Can you give him the hard copies.

Su - cross - Brodsky

5253

1 Q Here is DX 111-21. You have it in front of you, Mr. Su?

2 A Yes. I don't see anything here that says Retrophin, but

3 --

4 Q If you look at your e-mail on June 21, 2012, you were
5 telling Mr. Shkreli that the law firm was inquiring as to why
6 Retrophin stop paying workers comp?

7 A Yes. Yes, the e-mail is correct.

8 Q And you were using your MSMB Capital e-mail address?

9 A Correct.

10 Q Your signature block is MSMB Capital?

11 A Right.

12 Q That happened more than once, that happened many times
13 where you were doing Retrophin business on MSMB Capital,
14 right?

15 A Yes.

16 Q And you testified on direct examination that there were
17 separate EIN numbers, right?

18 A Yes.

19 Q Just because you used separate EIN numbers doesn't mean
20 you didn't intermingle MSMB Capital and Retrophin business
21 together, did you?

22 MR. KESSLER: I object to the form.

23 THE COURT: Rephrase, Mr. Brodsky.

24 Q The separate EIN numbers had nothing to do with how you
25 operated the business, did it, sir?

Su - cross - Brodsky

5254

1 A From my understanding what EINs are it's just used to pay
2 tax to the IRS as an identifier.

3 Q Right.

4 A That's my understanding of EIN.

5 Q And a separate EIN number, Mr. Su, doesn't mean you don't
6 operate the business differently, correct? You operated
7 Retrophin as you operate Retrophin regardless of what an EIN
8 number was?

9 MR. KESSLER: Objection to the form.

10 THE COURT: Overruled.

11 A The EIN is issued by the IRS for separate companies.

12 Q Right.

13 A And it's a tax identifier.

14 Q Correct, understood.

15 Mr. Su, does the IRS have any idea, to your
16 knowledge, does the IRS have any idea how Retrophin and MSMB
17 are operating their businesses in 2012?

18 A I don't believe so. But I can't speak for the IRS.

19 Q All right?

20 Now, I wanted to do two more things and sort of talk
21 about your employment history, Mr. Su.

22 Do you remember sending to Citrin Cooperman, copying
23 Mr. Greebel, in November 2012 Mr. Pierotti's separation
24 agreement?

25 A Can you refresh my memory, please?

Su - cross - Brodsky

5255

1 Q Sure.

2 MR. BRODSKY: May I approach, your Honor?

3 THE COURT: Yes.

4 Q Let me show you DX 111-60 for identification, Mr. Su.

5 MR. BRODSKY: For the record it is an e-mail from
6 Mr. Su to Mr. Massella, Ms. Chew and Ms. Liang, a copy to
7 Mr. Greebel, with an attachment.

8 Q Do you remember sending the separation agreement with
9 Mr. Pierotti in November, 2012?

10 A That's what this e-mail says.

11 Q You don't independently remember it?

12 A No.

13 MR. BRODSKY: Your Honor, we offer 111-60.

14 MR. KESSLER: No objection.

15 THE COURT: DX 111-60 is received in evidence.

16 (So marked.)

17 Q You told Mr. Cooperman to take Mr. Pierotti off cap table
18 per the separation agreement, right?

19 A Yes.

20 Q You told Citrin Cooperman that Mr. Pierotti's vested and
21 nonvested shares should be cancelled?

22 A Yes.

23 Q And that is pursuant to the attached agreement that you
24 sent to them, right?

25 A Correct.

Su - cross - Brodsky

5256

1 Q If we scroll to the attached agreement, it has
2 termination of employment and release, right?

3 A Yes.

4 Q And the first paragraph it says dear Caroline. Do you
5 see that?

6 A Yes.

7 Q It's addressed to Mr. Pierotti but it says dear Caroline,
8 this agreement and release -- do you see the last page that
9 is signed by Mr. Pierotti? Do you recognize the signature?

10 A I don't.

11 Q Do you recognize Mr. Shkreli's?

12 A Yes.

13 Q How often did you see Mr. Shkreli's signature, all the
14 time?

15 A Often.

16 Q Often meaning like every day, every other day? You can't
17 remember? Yesterday you had a recollection --

18 A I saw his signature a lot. He signed a lot of documents.
19 I saw a lot of scanned things that were in the folder. I saw
20 the things that were of the company that he shined.

21 Q How often did you talk to Mr. Shkreli by telephone?

22 A By what?

23 Q By telephone.

24 A Not often.

25 Q Not often. You spoke to him in the office?

Su - cross - Brodsky

5257

1 A Most of the time, yes.

2 Q You worked at home several times, right?

3 A I worked at nights at home and weekends.

4 Q Mr. Shkreli traveled for the job?

5 A No. He was in the office a lot. He didn't travel much.

6 Q Okay?

7 Looking at the termination agreement, does it say
8 for Mr. Pierotti, this agreement and release, the agreement
9 will confirm the termination of your employment with MSMB
10 Healthcare Management and Retrophin, Inc., right?

11 A Yes, that's what it reads.

12 Q Then if you scroll over to page three, paragraph five, do
13 you see the non-disparagement provision?

14 A Yes.

15 Q Did you understand that this was a non-disparagement
16 agreement between Mr. Pierotti and Mr. Shkreli?

17 MR. KESSLER: Objection, your Honor.

18 THE COURT: I'll sustain. I'll sustain the
19 objection.

20 Q Do you see paragraph 5, non-disparagement in DX 111-60 in
21 evidence?

22 A Yes.

23 Q And you were sending this to Mr. Massella an and
24 Ms. Liang, correct, and Ms. Chew?

25 A Yes.

Su - cross - Brodsky

5258

1 Q And that in paragraph five non-disparagement an agreement
2 you sent in GX 111-60 in evidence, states you agree at all
3 times you will refrain --

4 MR. KESSLER: Your Honor, object to the question.

5 THE COURT: Let him finish the question and then
6 I'll rule on the objection. It's a question we have not heard
7 yet.

8 Q You will refrain from making any statements, whether
9 publicly or privately, to anyone, including, without
10 limitation, to the press or the media, to current or
11 prospective investors in any fund or account managed or
12 advised by MSMB or its affiliates, to future employers or
13 prospective employers, or to other market participants,
14 regarding MSMB or Retrophin, or any of their respective
15 affiliates, past or current officers, managers, employers,
16 investors or principals, including, without limitation Martin
17 Shkreli, which could be interpreted to disparage, criticize or
18 defame the business, reputation, ethics or integrity of any
19 such person, or which could adversely affect the business of
20 any such person. This restriction applies to both written and
21 oral statements, as well as to statements posted by you on the
22 internet, even if posted anonymously. It also applies to
23 statements made by third parties at your request or on your
24 behalf. If you are asked to offer an opinion on Retrophin,
25 MSMB, or any of its related parties you will refrain from

Su - cross - Brodsky

5259

1 answering and may reference the restriction this agreement
2 places on you.

3 Do you see that written there? , Mr. Su.

4 A Yes.

5 (Continued on next page.)

6

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Su - cross - Brodsky

5260

1 BY MR. BRODSKY: (Continuing)

2 Q And, Mr. Su, you sent this to, this agreement, separation
3 agreement because Citrin Cooperman needed to know what to
4 remove from the cap table, correct?

5 A Anything that had to do with the cap table, I sent out --

6 Q Okay.

7 A -- to the legal team or the lawyers and the accountants
8 and it was, whatever that was relevant to other third parties.

9 Q And, Mr. Su, before we get into your background, there's
10 one thing I wanted to follow up from yesterday.

11 Can we put up Government Exhibit 111-17-H. This is
12 that November 29th forwarding of the agreement, the transfer
13 between Mr. Biestek and Mr. Shkreli, do you remember that?

14 A Yes.

15 Q And if we go to the last page, I had asked you about the
16 signature, correct, July 1, 2012, with the redacting tape? Do
17 you remember that, Mr. Su?

18 A Yes.

19 Q And if we then can put up Government Exhibit 111-19.
20 This is the correction you sent out, Mr. Su, on that same day:
21 Please see attached for date of transfer.

22 Do you remember that?

23 A Yes.

24 Q And the last page had the signatures, correct? If we can
25 put them side by side.

Su - cross - Brodsky

5261

1 MR. KESSLER: Your Honor, this entire line of
2 questioning about this document has been asked and answered.

3 THE COURT: Sustained.

4 MR. BRODSKY: Your Honor, I just want to follow up
5 on one thing that I thought I didn't complete. It's just a
6 small --

7 THE COURT: All right. Get to the point and
8 complete. Don't repeat what's already been covered.

9 MR. BRODSKY: Understood.

10 Q Based on your testimony today about your familiarity with
11 Mr. Shkreli's signature, sir, do you recognize that the
12 June 1, 2012 document was re-signed by Mr. Shkreli and
13 Mr. Biestek?

14 MR. KESSLER: Your Honor, I object to the comparison
15 of handwriting which we objected to yesterday.

16 THE COURT: All right. You're asking about
17 Mr. Shkreli and Mr. Biestek?

18 MR. BRODSKY: Just Mr. Shkreli's.

19 THE COURT: Just Mr. Shkreli. And asking him if he
20 could confirm that it was re-signed?

21 MR. BRODSKY: Yes, based on his familiarity with the
22 signature.

23 THE COURT: If you can answer the question, I will
24 allow it.

25 THE WITNESS: I can't.

Su - cross - Brodsky

5262

1 Q Nothing wrong, Mr. Su, with Mr. Shkreli and Mr. Biestek
2 re-signing a document memorializing an agreement that they
3 had?

4 A I can't answer that.

5 Q Let me talk about your history, Mr. Su, and then I think
6 we can conclude. I just wanted to go over your history.

7 So, you graduated from Syracuse University in 1997?

8 A Correct.

9 Q You then worked for Goldman Sachs, right?

10 A Correct.

11 Q You worked in the analyst program for about two years,
12 correct?

13 A Yes.

14 Q You didn't make it the full two years because they fired
15 you?

16 A Yes.

17 Q And you were not in a senior position, correct?

18 A The lowest.

19 Q The lowest position?

20 A Yes.

21 Q And you filled out a FINRA questionnaire, right?

22 That's the regulatory body that regulates, that
23 partially regulates the securities industry, right?

24 A Correct.

25 Q And the questionnaire was a list of questions that you

Su - cross - Brodsky

5263

1 had to answer honestly and truthfully, right?

2 A Yes. It was NASDAQ at the time.

3 Q And NASDAQ was the organization which got taken over by
4 FINRA?

5 A Yes.

6 Q And you filled out the firm incorrectly, you said, right?

7 A Yes.

8 Q And it's not your fault that you filled it out
9 incorrectly because you didn't realize you had been arrested
10 for a felony, right?

11 A Absolutely my fault.

12 Q Absolutely your fault. Then, you were fired, correct?

13 A Yes.

14 Q And you went to Weiss, Peck & Greer?

15 A Yes.

16 Q You didn't tell them about your firing or you told them
17 about your firing?

18 A They knew about it. The hiring manager was from Goldman
19 Sachs and he hired me there.

20 Q And you were in a trader position there, correct?

21 A Correct.

22 Q And you're not a senior position, correct?

23 A No. At that time, I was pretty --

24 Q Junior?

25 A Which part? When I started or when I left?

CMH

OCR

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Su - cross - Brodsky

5264

1 Q Either one. When you started and when you left, you
2 reported to a portfolio manager, correct?

3 A Correct.

4 Q And that portfolio manager reported to other people,
5 correct?

6 A Yes.

7 Q So, you were in a junior position?

8 A Yes.

9 Q Okay. And you and your portfolio manager had a
10 miscommunication, I think you said?

11 A Yes.

12 Q And it resulted in a loss, right?

13 A Yes.

14 Q And you had to leave because you didn't like what they
15 asked you to do, correct?

16 A Correct.

17 Q And that was not your fault, correct, that you had to
18 leave? It was a miscommunication?

19 A There was a miscommunication in trade. They wanted me to
20 put in a fund. I said no. We put the firm error account.
21 Had a conversation with me two, three weeks afterwards and
22 then we just parted way. They gave me some money and asked me
23 to sign a document. I said, forget the money, I don't want
24 the money, I'm not signing because I don't agree with what
25 they said.

CMH

OCR

RMR

CRR

FCRR

Su - cross - Brodsky

5265

1 Q And then you went to Cramer Rosenthal for two years,
2 correct?

3 A Correct.

4 Q And were you a trader there?

5 A Yes.

6 Q In a junior position?

7 A Yes. Yes.

8 Q And then you went to BancTec Capital in Dallas, correct?

9 A Yes.

10 Q 2004 to 2006, right?

11 A Yes.

12 Q And you were a trader there as well?

13 A Yes.

14 Q A junior position, correct?

15 A Not, in BancTec. I mean, you're the trader. They had
16 junior trader positions and they had a senior trader
17 positions. When I was at Weiss Peck & Greer, I ended up as a
18 senior trader. I managed the hedge fund book over there.
19 Kramer Rosenthal, the same thing, I managed the hedge fund
20 book there which was senior.

21 Q You reported to somebody who reported to somebody who
22 reported to somebody, correct?

23 A Who reported to somebody, yes.

24 Q Okay. And then you started your own fund Othello
25 Capital, right?

CMH

OCR

RMR

CRR

FCRR

Su - cross - Brodsky

5266

1 A Yes.

2 Q And you shorted the Typhoon Tech stock, correct?

3 A That was one of our investments.

4 Q You shorted it, correct?

5 A Typhoon Technologies, we had a short position on that.

6 Q Yes or no. Typhoon Technology was a highly illiquid
7 position?

8 A Yes.

9 Q And, yes or no, it was trading on the pink sheets?

10 A I can't recall.

11 Q And you suffered a loss of approximately \$913,000?

12 A I can't remember the number but I suffered a loss, the
13 firm suffered a loss.

14 Q You suffered a loss. And you testified you took your
15 prime broker to arbitration, right?

16 A Yes.

17 Q And that prime broker was Penson Financial Services,
18 correct?

19 A Yes.

20 Q And you testified that you won. That's what you told the
21 jury, right?

22 A Yes.

23 Q Now, that's not the whole story, is it, sir?

24 A What's the other part that I'm?

25 Q Well, you started that litigation on October 16, 2008,

Su - cross - Brodsky

5267

1 didn't you? Do you remember that?

2 A Sorry. What was the date?

3 Q October 16, 2008.

4 A Around that time frame.

5 Q And you continued that litigation for two years and
6 9 months. Right?

7 A Yes.

8 Q And you sought \$28 million in damages, correct?

9 A Yes.

10 Q And you sought \$23 million in damages for your fund,
11 Othello, right?

12 A Yes.

13 Q And you sought personally \$5.6 million for yourself?

14 A Yes.

15 Q And the arbitrator denied all of your claims except for
16 one, right?

17 A Yes.

18 Q You had alleged the series of claims, including
19 misrepresentation, fraud, breach of contract, tortious
20 interference, violations of Texas securities laws, violations
21 of Deceptive Trade Practices Act, right?

22 A Yes.

23 Q And that was all denied except for one claim, correct?

24 A We got money back for it.

25 Q Sir, yes or no. That was all denied except for one

Su - cross - Brodsky

5268

1 claim?

2 A I can't remember what the claim was. I can't remember.

3 Q Well, yet, two days ago, you testified it was \$600,000 in
4 legal fees and that's what you won, do you remember that?

5 A I said there was \$600,000 legal fees that the Penson
6 Financial spent over a short period of time which was only
7 three weeks which I thought was obscene.

8 Q And you said you won, right?

9 A That's what the arbitrator ruled.

10 Q Well, the arbitrator -- there were three arbitrators,
11 weren't there?

12 A Yes.

13 Q And the three arbitrators ruled that you could get back
14 \$250,000 of the attorneys' fees, right?

15 A Yes.

16 Q And that's all they granted you, correct?

17 A Yes.

18 Q They denied everything else?

19 A I got 250,000, yes.

20 Q They denied all your other claims that you asserted, the
21 misrepresentation, the tortious interference, the deceptive
22 trade practices, all that was denied?

23 A If that's what the claim was, it was.

24 Q Well, let me show you to refresh your memory.

25 DX 111-444.

Su - cross - Brodsky

5269

1 MR. BRODSKY: May I approach, Your Honor?

2 THE COURT: Yes.

3 Q Showing you DX 111-144 for identification.

4 THE COURT: This is just to refresh?

5 MR. BRODSKY: Yes, just to refresh.

6 Q And I'm showing you an arbitration. I can direct your
7 attention, I can direct your attention to the fifth page,
8 Mr. Su --

9 A Yes.

10 Q -- where it lists out all the claims, counterclaims.

11 A Okay.

12 Q You can put that aside, Mr. Su.

13 Does it refresh your recollection that all your
14 other claims are claims for breach of contract,
15 misrepresentation, tortious interference, violations of
16 securities laws, Deceptive Trade Practices Act, were all
17 denied?

18 A Yes.

19 Q You did not get the \$29 million you were seeking?

20 A No.

21 Q Now, you testified that in or about -- I think your
22 testimony was Mr. Shkreli reached out to you in September,
23 August, September time frame of 2011 for the job of chief
24 operating officer, right?

25 A Yes.

Su - cross - Brodsky

5270

1 Q And you said you set up a couple of interviews and you
2 started in January 2012, right?

3 A Correct.

4 Q You left out a part that in 2009, you actually responded
5 to a posting that Mr. Shkreli put up for an executive position
6 at MSMB, correct?

7 MR. KESSLER: Objection to "left out."

8 THE COURT: I will sustain.

9 Can you rephrase it?

10 Q Isn't it true, sir, that you interviewed for the job in
11 2009?

12 A I interviewed with Martin in 2009. That's when we first
13 met.

14 Q Right. So, the time frame of when Mr. Shkreli reached
15 out to you for a position was, first, in 2009, correct?

16 A I reached out to him after I saw a posting in the sheet
17 website called Bloomberg and I interviewed with him in 2009.

18 Q And this was after you started your litigation against
19 Penson, correct?

20 A I can't remember the date you read off but, yes, 2008,
21 yes.

22 Q And is it not true that by that time, 2009, Othello
23 Capital was winding down and you were looking for other
24 opportunities when you saw Mr. Shkreli's posting?

25 A Yes.

Su - cross - Brodsky

5271

1 Q And then Mr. Shkreli didn't contact -- you interviewed in
2 New York, correct, in 2009?

3 A Yes.

4 Q And then based on this a meeting, you thought he was
5 smart, right?

6 A Yes.

7 Q You thought he understood the health care space?

8 A Yes.

9 Q You thought he understood the money management business?

10 A Yes.

11 Q And then you reached out, he reached out to you and two
12 years later in 2011 --

13 A Yes.

14 Q -- you interviewed in New York and you took the job?

15 A Yes.

16 Q And then a few months in, you filed your complaint with
17 the SEC, right?

18 A I filed it in May 2012.

19 Q And that was with respect to MSMB, correct?

20 A Yes.

21 Q And then you said that in December -- and then you stayed
22 on. You filed the complaint, you said in your complaint your
23 main allegation was you were worried that the assets under
24 management weren't, might not be \$100 million as advertised to
25 you, correct?

Su - cross - Brodsky

5272

1 A I think my thinking there was in May, I filed a complaint
2 on the SEC website, and I was concerned about the numbers that
3 were being advertised to investors over the phone.

4 Q MSMB, correct, sir, relating to MSMB? Yes or no?

5 A It was for MSMB, yes.

6 Q And your concern, yes or no, was that you were being told
7 and others were being told that the amount of assets under
8 management were anywhere between \$40 million and \$100 million?

9 A It was -- some days it was 40 million. Some days it was
10 75 million. Some days it was 125 million. There was no
11 consistency as to the amount of assets.

12 Q And you don't know, one way or the other, whether that
13 same representation regarding the assets, \$40 million under
14 management, was made to Katten Muchin? Do you know that one
15 way or the other?

16 A No.

17 Q And you did not bring obviously the whistleblower, the
18 SEC complaint to the attention of Katten Muchin, right?

19 A I didn't tell anybody.

20 Q And then in December of 2012, you said you walked out,
21 right? There was a last straw, correct?

22 A Yes.

23 Q And the last straw for you was the \$10,000 that you saw
24 spent, correct?

25 A That's when Martin transferred \$10,000 out of the

CMH

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FCRR

Su - cross - Brodsky

5273

1 remaining \$20,000 in the Retrophin bank account to his own
2 personal bank account.

3 Q And you were concerned for the shareholders, right?
4 That's your testimony?

5 A I was concerned about that.

6 Q Yes?

7 A Amongst other things.

8 Q And isn't it true that just a few weeks before, you made
9 sure you were paid on December 3rd \$12,500?

10 A For salary?

11 Q Yes.

12 A I don't know if I was made sure, but I got paid.

13 Q And then isn't it true that your friend George Huang
14 received \$35,000 on the same date on December 3rd?

15 A Was this the repayment of his loan that he lent the
16 company?

17 Q Let me refresh your recollection.

18 Do you remember on December 18, 2012, a few days
19 before you walked out, that you e-mailed yourself Chase Bank
20 account information of Retrophin?

21 A I don't remember.

22 Q Let me try to refresh your recollection.

23 MR. BRODSKY: May I approach, Your Honor?

24 THE COURT: Yes.

25 Q DX 111-41 for identification which is an e-mail from

Su - cross - Brodsky

5274

1 Jackson Su to Jackson Su, December 18, 2012, Attachment:
2 Chase online account activity, Chase online account activity.

3 Does it refresh your memory, Mr. Su, that you
4 e-mailed yourself December 18, 2012 the Chase online bank
5 activity of Retrophin?

6 A If it says this on this piece of paper, then it's on this
7 piece of paper.

8 MR. BRODSKY: Your Honor, we offer it.

9 MR. KESSLER: No objection.

10 THE COURT: We receive Defense Exhibit 111-41.

11 (So marked.)

12 Q Again, you're using MSMB Capital e-mail address, right?

13 A That is the e-mail where it came from.

14 Q Okay. And then if we scroll through on the attachment
15 you sent to yourself -- you sent this to your personal e-mail
16 I take it, correct?

17 A I don't know that. It just says Jackson Su.

18 Q You think you went from MSMB Capital to MSMB Capital
19 e-mail address?

20 A I don't know.

21 Q You don't know? Can you think of any reason today why
22 you would use Jackson@MSMBCapital.com, attach the Chase Bank
23 is the and send it to Jackson@MSMBCapital.com?

24 MR. KESSLER: Objection.

25 THE COURT: Overruled. You can answer it.

Su - cross - Brodsky

5275

1 A Again, I don't remember this.

2 Q Okay. You knew you were leaving by the time you e-mailed
3 this to yourself, right?

4 A I don't know.

5 Q Well, you knew by then you weren't going to have the
6 opportunity to buy Fearnow shares, right?

7 A If that was the timeline and it was allocated already,
8 then that's -- then I wouldn't have received any.

9 Q And then if you scroll through what you attached, is it
10 fair to say that if we direct your attention to the third
11 page, RTRX2481, it shows, on December 3rd, 2012, a wire out
12 to Jackson Su of Othello Capital, Floral Park, New York, of
13 \$12,500?

14 A Yes.

15 Q You certainly knew that because you had the bank account
16 information that you were taking 12,500 out of the remaining
17 66 -- sorry -- out of the remaining \$79,295 out of Retrophin's
18 account?

19 MR. KESSLER: Objection to the form, "you were
20 taking."

21 THE COURT: Sustained.

22 Q You certainly knew that you were receiving \$12,500 or you
23 were wired \$12,500 on December 3rd of the remaining \$75,000 in
24 Retrophin's bank account, right?

25 A I got paid by Martin \$12,500 on December 3rd.

Su - cross - Brodsky

5276

1 Q You had no problem with that, right?

2 A No.

3 Q Okay. You didn't say, Take the money back because, I'm
4 concerned that Retrophin's running out of money, did you? I'm
5 asking, Mr. Su.

6 A Sorry. Can you repeat that?

7 Q Yes. In December 2012, did you say, when you received
8 the \$12,500, Take it back, Mr. Shkreli, give it to Retrophin,
9 because we're running out of money?

10 A I don't recall saying that.

11 Q And then there's the online transfer there to Mr. Huang
12 for \$35,000, right, right above that?

13 A Yes.

14 Q And that left \$31,000 in Retrophin's account?

15 A Okay.

16 Q Do you remember Mr. Huang saying, No, take it back, I'm
17 worried about the health of Retrophin?

18 A I was not part of that conversation if there was one.

19 Q And then you say you walked out and you didn't turn back,
20 right? You didn't turn back? You didn't come back into the
21 office?

22 A I did not come back into the office.

23 Q And on February 12, 2013, you made a written demand to
24 Mr. Shkreli for money, correct?

25 A Can you refresh my memory, please?

Su - cross - Brodsky

5277

1 Q Sure.

2 MR. BRODSKY: Government Exhibit 682-B in evidence.

3 Can we put that on the screen? And the lower e-mail.

4 Q That's from you on February 12, 2013, 8:57 a.m. Subject:
5 2012 performance bonus. Right?

6 A Yes.

7 Q And there you say to Martin: Hope all is well. I'd like
8 to discuss the bonus from the funds last year during my
9 employment with MSMB and Retrophin.

10 Right?

11 A Yes.

12 Q There you're including MSMB and Retrophin, right?

13 A That's what it says.

14 Q Okay. Attached is the contract we signed in
15 January 2012. It calls for performance related bonus paid to
16 me every year for the next five years. MSMB Healthcare LP
17 fund enjoyed over a 34 percent return since July 31, 2012,
18 according to an investor letter with a \$100 million assets.
19 That's a great return for you and the firm. Congrats. Please
20 forward along the final year end numbers and date in which a
21 check will be cut.

22 You want money, right, Mr. Su?

23 A According to my employment contract.

24 Q And you want money based on \$100 million in assets under
25 management, correct?

Su - cross - Brodsky

5278

1 A Which is what I was referring to with his investor
2 letter.

3 Q A few months ago, you told the SEC that you didn't know
4 whether he had \$100 million under management, right, and you
5 were concerned, correct?

6 A Correct.

7 Q And now you're asking for a demand to Mr. Shkreli to get
8 a piece of whatever profits there are, correct?

9 A Yes.

10 Q And you know the reason you sent it on February 12th at
11 8:57 a.m., don't you?

12 Why don't you tell the jury why you sent it on that
13 date at that time.

14 A I don't know what you're referring to.

15 Q That's a random day that you chose, on February 12,
16 8:57 a.m.?

17 MR. KESSLER: Objection to the form.

18 THE COURT: Rephrase.

19 Can you just tell me what exhibit number that is?

20 MR. BRODSKY: Yes. That's Government Exhibit 682-B.

21 THE COURT: Thank you.

22 Q Mr. Su, sitting here today, can you think of a reason why
23 on February 12, 2013, at 8:57 a.m., you chose to send this
24 e-mail to Mr. Shkreli?

25 A I can't remember or think of why sitting here today.

Su - cross - Brodsky

5279

1 Q Let me see if I can refresh your recollection.

2 Isn't it true, sir, that at 8:28 a.m., less than,
3 about 30 minutes before you sent your e-mail, Retrophin
4 announced on Business Wire that it had raised \$10 million in
5 private money, Mr. Su?

6 A What's the question?

7 Q Isn't it true?

8 A I don't know. Can you refresh my memory?

9 Q Sure.

10 A And show it to me, please.

11 Q Let me show you DX 111-126 in evidence -- sorry, not
12 evidence -- for identification.

13 MR. BRODSKY: May I approach, Your Honor?

14 THE COURT: Yes.

15 Q Showing you 111-126 for identification.

16 MR. BRODSKY: For the record, it's Business Wire
17 announcement, Retrophin raises \$10 million in private
18 placement. We offer it, Your Honor.

19 MR. KESSLER: No objection.

20 THE COURT: We receive Defense Exhibit 111-126.

21 (So marked.)

22 Q Do you see, Mr. Su, that this announcement is made,
23 Retrophin raises \$10 million in private placement, and the
24 date is February 12th at 8:28 a.m.?

25 A Yes.

Su - cross - Brodsky

5280

1 Q Does it refresh your memory that you read this press
2 release that Retrophin was announcing it had raised
3 \$10 million and then about 30 minutes later, less than
4 30 minutes later, you sent off an e-mail to Mr. Shkreli
5 demanding a performance bonus?

6 A No.

7 Q It's a pure coincidence, sir, that Retrophin makes this
8 announcement less than 30 minutes before you send that e-mail
9 on February 12th demanding money?

10 A I don't know. Coincidence? I don't know. It's not why
11 I sent it.

12 Q It's not why you sent it, but so it's a coincidence then
13 that less than 30 minutes before you sent your e-mail,
14 Retrophin is announcing great news.

15 A If you want to call it and term it coincidence, that
16 time, that's what you say. I don't agree.

17 Q All right. And then you make your demand and Mr. Shkreli
18 ignores you, correct?

19 A Correct.

20 Q He just ignores you; he doesn't respond to your e-mail
21 and that just made you more upset, right?

22 A No, I don't remember a time where I was actually upset.

23 Q And then you, on March 5th, sent an e-mail.

24 MR. BRODSKY: Sorry, Your Honor.

25 Q So, he doesn't respond to you and you access the Global

Su - cross - Brodsky

5281

1 Relay system over and over and over again, copying documents.

2 A I know I accessed the Global Relay system after I left.

3 I don't know if it was the way you phrase it, over and over
4 and over again.

5 Q All right. Let me see if I can refresh your memory.

6 111-48?

7 THE COURT: Do you want this on the record, are you
8 announcing --

9 MR. BRODSKY: Yes, Your Honor.

10 DX 111-48 for identification, DX 111-87 for
11 identification, DX 111-88 for identification, DX 111-89 for
12 identification, DX 111-90 for identification, DX 111-91 for
13 identification, DX 111-92 for identification, DX 111-93 for
14 identification, DX 111-160 for identification. We're just
15 going to collate them.

16 Q Let me ask you questions as they're collated for you,
17 Mr. Su.

18 You don't remember going into the Global Relay
19 system in February 2013, right?

20 A I don't recall the number of times, the dates and what I
21 accessed in the Global Relay system.

22 Q And then you were sent a termination letter by
23 Mr. Greebel, correct?

24 A At some point, I did. I don't remember the date.

25 Q And let me show you DX 111-30 for identification.

Su - cross - Brodsky

5282

1 MR. BRODSKY: May I approach, Your Honor?

2 THE COURT: Yes.

3 MR. BRODSKY: For the record, it's an e-mail from
4 Evan Greebel, March 8, 2013, to JacksonSu@yahoo, copied to
5 Martin Shkreli, a letter.

6 Q Is this the date that Mr. Greebel on behalf of Retrophin
7 sent you the termination letter?

8 A It says March 8, 2013.

9 Q Do you remember -- let's put up Government Exhibit 111-45
10 in evidence.

11 Do you remember the government showed you this long
12 e-mail which we'll go through? That's the March 12th e-mail
13 that you sent.

14 A Yes.

15 Q Well, let's scroll down. That's an e-mail that you
16 received from Mr. Greebel on March 8th, right?

17 A Yes.

18 Q That's the letter that we're looking at that's attached,
19 right?

20 A Yes.

21 MR. BRODSKY: Your Honor, I offer DX 111-30.

22 MR. KESSLER: No objection.

23 THE COURT: We receive 111-30.

24 (So marked.)

25 Q So you got this letter from Retrophin and MSMB

Su - cross - Brodsky

5283

1 essentially, all the entities, saying that you ceased to
2 perform work -- keep scrolling -- you ceased to perform work,
3 paragraph one, on or about December 21st. Right, Mr. Su?

4 A That's what it says.

5 Q You received this in writing, right?

6 A This was an attachment in an e-mail.

7 Q Did you read it at the time?

8 A Yes.

9 Q And it upset you, correct?

10 A I don't know -- I don't think it upset me. It was just a
11 letter. It is what it is.

12 Q Just a letter? Okay. Let's go through just the letter.

13 Paragraph one: On or about 21, 2012, you ceased to
14 perform your duties under the employment agreement. Right?

15 THE COURT: Did you mean to say December 21, 2012?

16 MR. BRODSKY: I'm sorry. December 21, 2012.

17 A Yes.

18 Q And it's true, you failed to come to work or interface
19 with any of the companies, right?

20 A Yes.

21 Q Paragraph number two says: Pursuant to subsection A of
22 the second paragraph of section 12 of your employment
23 agreement, and as a result of your repeated and unexcused
24 absences from the workplace, the companies have asked us to
25 advise you via this letter that the companies are terminating

Su - cross - Brodsky

5284

1 you for cause retroactive to December 21, 2012. Right?

2 A That's what it says.

3 Q And then it says all payments you're entitled to are
4 terminated, right?

5 A That's what it says, yes.

6 Q And then just the letter says, if you go to the second
7 page, on paragraph five, it says: We have been advised that
8 in December 2012, you and Mr. Shkreli had multiple
9 conversations about Mr. Shkreli transferring a portion of his
10 stock in Retrophin, Inc. to you. Based on your intentional
11 and repeated unexcused absence from work, it appears that you
12 may have fraudulently induced Mr. Shkreli to deliver such
13 stock to you as it now appears that you never intended to
14 honor the services that you had contractually agreed to
15 perform. As such, Mr. Shkreli or Retrophin may be entitled to
16 damages as a result of your fraudulently induced conveyance.

17 Right? That's what it said to you?

18 A That's what it says.

19 Q It says you took 50,000, 10,000 shortly before that,
20 25,000 shares, right?

21 MR. KESSLER: Objection.

22 THE COURT: Sustained.

23 Q It basically says you took a bunch of shares of stock
24 from Mr. Shkreli and you left, right?

25 A In summary, that's what it says.

Su - cross - Brodsky

5285

1 Q And just a few short minutes ago, you said the 15,000
2 shares you received, the 10,000 shares you received from
3 Mr. Shkreli's personal holdings was to incentivize you to
4 continue to work for Retrophin, right?

5 A I did say that.

6 Q Did you continue to work for Retrophin after December 21,
7 2012?

8 A Okay. Let me add --

9 Q Yes or no, sir.

10 A -- that it was an award to me for me for all the hard
11 work I've done.

12 Q Did you continue to work for Retrophin after December 21,
13 2012?

14 A I did not.

15 Q And then on paragraph six, it says that you've been
16 misrepresenting to third parties were you the chief operating
17 officer of Retrophin, Inc. and I'd ask you to stop.

18 Right? Correct?

19 A That's what it says.

20 Q And it says you were -- and you can represent you were
21 chief operating officer of Retrophin LLC, but you can't do it
22 for Inc., right?

23 A That's what this says.

24 Q Okay. And then it says, under the last paragraph: We
25 remind you of your obligations under your employment agreement

Su - cross - Brodsky

5286

1 specifically as they relate to the confidentiality of
2 proprietary information that you learned about any of the
3 companies.

4 It's basically saying don't use any of the stuff
5 from Retrophin and the related companies, correct?

6 MR. KESSLER: Objection to the summarizing of the
7 document that's in evidence.

8 MR. BRODSKY: It's cross-examination.

9 THE COURT: Yes. Why don't you ask -- I think you
10 could rephrase the question and avoid an objection.

11 Q Mr. Su, you understood Mr. Greebel on behalf of Retrophin
12 and the affiliated entities was telling you you can't use our
13 proprietary information or confidential information, right?

14 A Whatever it says in that paragraph.

15 Q You understood that from your employment agreement,
16 right?

17 A Whatever it says in the employment agreement.

18 Q Well, sir, your lawyer drafted your employment agreement,
19 right? John Bach. Didn't he?

20 A No.

21 Q In January 2012, you created that employment agreement
22 and gave it to Mr. Shkreli?

23 A No. Martin created it and asked me to sign it but --

24 Q You had --

25 A -- on that template which was just my name, the salary

Su - cross - Brodsky

5287

1 and the performance bonus. Then he gave it to him and he
2 signed it and I signed it.

3 Q You had your lawyer review it, correct?

4 A No, there was no lawyer.

5 Q And you weren't happy that Mr. Greebel was sending you
6 this termination letter on March 8th, correct, sir?

7 A I don't recall my feeling.

8 Q And you -- do you remember after getting this, continuing
9 to go into Global Relay, pulling down documents, sir?

10 A I don't remember.

11 Q And then you sent -- Mr. Shkreli then ignores your next
12 e-mail.

13 MR. BRODSKY: If we can put up the March 6, '82,
14 Government Exhibit 682-B, I believe. Let's scroll up to the
15 second e-mail, Mr. Carter, the March e-mail.

16 Q March 5th, you send this follow up e-mail, correct,
17 Mr. Su?

18 A Yes.

19 Q And you say in this e-mail that you worked nonstop,
20 right, Mr. Su?

21 A Yes.

22 Q And you're demanding, again, money, correct?

23 A I'm asking him to follow my employment contract.

24 Q You want money, Mr. Su, correct?

25 A I'm asking him to follow the employment contract.

Su - cross - Brodsky

5288

1 Q And by following the employment contract, you're asking
2 for money, correct? Yes or no.

3 A It would include compensation under the employment
4 contract.

5 Q And in the second paragraph, you say that you don't want
6 to escalate the situation to lawyers, right, meaning I don't
7 want to sue you but I will, right?

8 A Yes.

9 Q And when you reference Spencer Spielberg, Sarah Hassan,
10 Lindsay Rosenwald and what you say there, that's because you
11 actually went into the Global Relay system and accessed the
12 threat letters that you saw, correct?

13 A I don't recall.

14 Q Well, Lindsay Rosenwald, isn't it true that you went into
15 the Global Relay system and you accessed Mr. Rosenwald's
16 litigation threat against Retrophin?

17 A I have seen a copy of it. I don't remember the time
18 frame which I did see it.

19 Q Well, certainly it wasn't 2012, right?

20 A Again, I don't remember.

21 (Continued on next page.)

22

23

24

25

Su - cross - Brodsky

5289

1 BY MR. BRODSKY:

2 Q And then if we keep scrolling, you basically say, I don't
3 want to burn a bridge, but if we can't come to agreement and
4 settle the matter, I'd welcome a solution.

5 Right? Correct?

6 A That's what it reads, yes.

7 Q And if I don't hear back from you, you say, well, you
8 give him a timeline, March 8, I'm going to assume you don't
9 care and I'll have to take next steps, right?

10 A That's what it means, yes.

11 Q That has nothing to do, your e-mail has nothing to do
12 with the fact that Retrophin has announced a successful
13 raising of money and is doing well, correct?

14 A I can't connect the two.

15 Q And then you get the response, which is the termination,
16 right, on March 8, 2013.

17 MR. BRODSKY: If we could put up 111-45 again. DX
18 111-45.

19 (Exhibit published to the jury.)

20 Q And you sent this response on March 12, correct?

21 Let me refresh your recollection regarding accessing
22 Global Relay. I'm going to show you --

23 MR. BRODSKY: May I approach, your Honor?

24 THE COURT: Yes.

25 Q I'm going to show you the exhibits I listed out before,

Su - cross - Brodsky

5290

1 which I will list out again in one moment.

2 THE COURT: Time frame?

3 MR. BRODSKY: I will look, your Honor.

4 THE COURT: Forgive me, did you move in Defense
5 Exhibit 111-30?

6 You did. Thank you.

7 MR. BRODSKY: The time frame, your Honor, is
8 February/March 2013?

9 MR. KESSLER: Is there a document in here from
10 December 2012? I just want to make sure.

11 MR. BRODSKY: December 2012.

12 THE COURT: Okay, December 2012 through March 2013?

13 MR. BRODSKY: There are different dates on them.
14 Let me do it this way, your Honor.

15 Q DX 111-48 for identification, do you have that in front
16 of you, Mr. Su?

17 MR. BRODSKY: I'm not offering it into evidence.

18 A Sorry, what was the number again?

19 Q DX 111-48. Do you see that in front of you?

20 A Yes.

21 Q Does it refresh your recollection, sir, that -- and this
22 is a document that came from your files, correct?

23 A It appears that way from the Bates.

24 Q You know from the Bates stamps it came from your
25 documents, your files?

Su - cross - Brodsky

5291

1 A Yes.

2 Q Does it refresh your recollection at the top that you
3 printed it from admin@msmbcapital.com on March 5, 2013?

4 A That's what it says here.

5 Q The same day that you sent -- that you get the
6 termination letter from -- the same day you sent the second
7 letter, the threat letter, to Mr. Shkreli, correct?

8 A The same day as which letter?

9 Q The e-mail that you sent, March 5.

10 A I can't find it. But if you're telling me that's the
11 second e-mail that I sent, if you're referring to that, then I
12 sent it.

13 THE COURT: Exhibit 682-B?

14 MR. BRODSKY: 682-B.

15 THE COURT: Do you have that one?

16 MR. BRODSKY: We can match that up.

17 Mr. Carter, can you put up 682-B?

18 THE COURT: Does somebody have Government Exhibit
19 682-B that we can put up?

20 MR. BRODSKY: We have it now.

21 Q March 5, correct?

22 A March 5, 2013, okay. Yes, I sent that e-mail.

23 Q After you sent this e-mail, does it refresh your
24 recollection that you went into Global Relay and you took a
25 document, correct?

Su - cross - Brodsky

5292

1 A That's what it appears on this piece of paper.

2 Q Well, no, the document is not in evidence, Mr. Su. But
3 does it refresh your memory that you went into the Global
4 Relay system --

5 THE COURTROOM DEPUTY: We can continue to put up
6 682.

7 Q -- you went into the Global Relay system, and you
8 accessed Bank of America information?

9 A According to this piece of paper, that's what this piece
10 of paper says.

11 Q And then if you go to DX 111-87 for identification, does
12 it refresh your recollection that on March 5, 2013, during the
13 evening, you went into the Global Relay system and you
14 accessed a document relating to you?

15 A On this piece of paper, yes.

16 Q The piece of paper comes from your files, Mr. Su.

17 A Right.

18 Q So, you have files in your possession, printout dates,
19 from going into the Global Relay system?

20 A Okay.

21 Q You have no other explanation for it other than the fact
22 that you went in using your password to msmbcapital.com, admin
23 msmbcapital.com, and pulled down the information, right?

24 A Okay.

25 Q I'm asking you, is that yes?

Su - cross - Brodsky

5293

1 A That's what it appears here, yes.

2 Q That's not what it appears, that's what you did, right?

3 A Yes.

4 Q And isn't it true that on your way out the door you
5 deleted your e-mail box, jackson@retrophin.com?

6 A No, because I never had a Retrophin e-mail.

7 Q Isn't it true -- did you delete your msmbcapital.com
8 e-mail address?

9 A I don't recall that.

10 Q Did you delete George Wang's e-mail box?

11 A I don't recall that.

12 Q And then if you look at DX 111-88 for identification,
13 does this refresh your recollection that on March 13 you went
14 into Global Relay system and you pulled down a document
15 related to Retrophin?

16 A Yes.

17 Q And that was a document -- you remember you pulled down
18 documents relating to Fearnow shares, people purchasing
19 Fearnow shares?

20 A It was one of the participants in the Fearnow stock.

21 Q Your mind was still on the fact that you had not had the
22 opportunity to get to buy Fearnow shares, correct?

23 A No. My mind was never on Fearnow.

24 Q Okay. And then if you skip over DX 111-90, you pulled
25 down a document -- does it refresh your recollection on the

Su - cross - Brodsky

5294

1 Global Relay system you pulled down documents relating to
2 Mr. Fernandez?

3 A Yes.

4 Q And then if you skip over to 111-93, did you pull down
5 document relating to Mr. Pierotti?

6 A Mr. Who?

7 Q Pierotti.

8 A 111-93?

9 Q Yes.

10 A Yes.

11 Q What about 111-94, does that refresh your recollection
12 you pulled down a threat letter from Dr. Rosenwald threatening
13 to sue MSMB entities and Retrophin?

14 THE COURT: I'm sorry?

15 MR. BRODSKY: 111-94 for identification.

16 THE COURT: What date are you asking him that he
17 pulled it?

18 MR. BRODSKY: This is on February 27, 2013.

19 A I don't have that.

20 THE COURT: I don't have it either. 111-94?

21 MR. BRODSKY: Let me provide it.

22 Here's 111-94 for identification.

23 THE COURT: Thanks.

24 Q Mr. Su, if you scroll through, does it refresh your
25 recollection that on February 27, 2013, you copied a document

Su - cross - Brodsky

5295

1 relating to Dr. Rosenwald's litigation threat against MSMB and
2 Retrophin?

3 A Yes.

4 THE COURT: I think you said February 27. Did you
5 mean to say that date?

6 MR. BRODSKY: It was February 27, 2013.

7 THE COURT: I see. Okay. Thank you.

8 A Yes.

9 Q And you can't remember exactly how many times you
10 continued to access the Global Relay system, right?

11 A Correct.

12 Q But whatever amount of times you continued to do it,
13 right?

14 A Sorry, what was the question?

15 Q Even though you can't remember the exact number, you
16 continued to do it.

17 THE COURT: After?

18 Q You continued to access the Global Relay system without
19 authorization.

20 MR. KESSLER: I was going to say time frame.

21 THE COURT: I think you need a temporal frame on
22 that question.

23 Q After you were terminated in March of 2013 retroactively
24 to December 21, you continued to go into the Global Relay
25 system and grab documents?

Su - cross - Brodsky

5296

1 A I accessed the system.

2 Q And in your mind, you're telling the jury that after
3 receiving Retrophin and MSMB's termination letter retroactive
4 to December 21 you have no problem with going into the
5 electronic system, grabbing the documents, and keeping them?

6 Mr. Su?

7 A Yes?

8 Q No problem, right?

9 A I was curious at the same time, nosey about my former
10 company.

11 Q You didn't just want to read about it, you wanted to go
12 into the system, correct?

13 A I accessed the system.

14 Q And that included bank account information, sir, right?

15 A Don't remember if I saw it.

16 Q And sitting here today, you don't even have a regret
17 about doing it, do you, sir?

18 A I regret having ever met Martin --

19 Q My question to you --

20 A -- the company, and everything else because I'm sitting
21 here having to deal with this.

22 Q Mr. Su, my question is very specific. Sitting here
23 today, you don't regret, you don't have any regret, of going
24 into the electronic Global Relay system after you received the
25 termination letter retroactive to December 21 and accessing

Su - cross - Brodsky

5297

1 the system and looking at Retrophin information.

2 A Again, I regret this whole situation.

3 MR. BRODSKY: Move to strike, your Honor. I'm
4 asking a very specific question.

5 THE COURT: I'll strike the response and ask the
6 witness to answer specifically the question that was posed by
7 Mr. Brodsky.

8 A Repeat the question, please.

9 MR. BRODSKY: Would you mind reading it back.

10 (Record read.)

11 A Regret it.

12 Q If we look at Government Exhibit 111-45, this is your
13 March 12 e-mail. In the last paragraph, you're demanding
14 money, correct?

15 You want \$250,000 for performance fees of 2012, you
16 want a buyout for the subsequent five years, right?

17 A That's what, I'm sorry?

18 Q Can we put it up?

19 A I didn't hear the last thing you said.

20 Q You wanted a payment of \$250,000 for performance fees of
21 2012 and you wanted him to buy you out of subsequent five
22 years of performance bonuses?

23 A That related to my contract. And if that's the numbers
24 at that time, that's the numbers.

25 Q That's what you demanded?

Su - cross - Brodsky

5298

1 A According to my employment contract, yes, if it followed
2 that.

3 Q Number two, you demanded \$75,000 buyout of the remaining
4 two quarters, right?

5 A According to my contract.

6 Q And number three, you demanded \$3,400 for unused
7 vacation, right?

8 A According to my employment contract.

9 Q And number four, you demanded \$8,400 reimbursement for
10 healthcare insurance cost.

11 A Yes.

12 Q And number five, you demanded 50,000 shares of
13 free-trading, unrestricted Retrophin stock.

14 A Yes.

15 Q And that's because you wanted some of the Fearnow shares
16 and this is your demand for 50,000, correct?

17 A That was one of the demands.

18 Q Now, Mr. Kessler asked you questions on the preceding
19 paragraphs. And in the first paragraph, you learned about
20 some of these items by going on to the system, correct, and
21 accessing information?

22 A I don't know what I learned about every single part of it
23 or when I learned it, but --

24 Q You testified about complete discovery. You didn't know
25 what it was; right, you didn't remember?

LAM

OCR

RPR

Su - cross - Brodsky

5299

1 A Correct.

2 Q You testified Merrill Communications had something to do
3 with forensics. Didn't they have something to do with
4 printers?

5 A I believe they were the forensics. I could be wrong
6 sitting here and I could have reversed it. I think Merrill
7 was the one doing forensic computer analysis for an SEC
8 investigation, but that could have been complete discovery or
9 co-phase. I don't recall which company did what.

10 Q In the third paragraph, you talk about how there was in
11 excess of \$100 million and you talk about correspondence with
12 Eric Schmidt with the SEC; do you see that?

13 A Yes.

14 Q Do you know that in October, November of 2012 Mr. Shkreli
15 represented himself in connection with the SEC?

16 A I don't recall.

17 Q You saw the documentation. You mentioned it in the
18 e-mail.

19 A Again, I don't recall.

20 Q You remember that it was Mr. Shkreli writing back to the
21 SEC. Without a lawyer.

22 A I don't recall.

23 Q Do you know one way or the other whether Mr. Shkreli ever
24 informed Mr. Greebel in October, November 2012 there was an
25 SEC inquiry?

Su - cross - Brodsky

5300

1 A I wouldn't know that.

2 Q But you knew about it, right?

3 A The SEC inquiry?

4 Q Yes. You said you knew about it in October
5 November 2012.

6 A Yes.

7 Q You didn't tell Mr. Greebel about it.

8 A No.

9 Was I supposed to?

10 Q You were the chief operating officer of the MSMB entities
11 and Retrophin, right?

12 A Yes.

13 Q And there's an SEC request for information relating to
14 the MSMB entities, right?

15 A There was.

16 Q You had no involvement in how to respond, in deciding how
17 to respond to that?

18 A Which one are we talking about specifically?

19 Q In October, November 2012 when you're chief operating
20 officer.

21 A For which SEC inquiry?

22 Q There was an SEC inquiry relating to the performance of
23 MSMB, right?

24 A Yes, from the SEC, yes.

25 Q And it was related to MSMB, correct?

Su - cross - Brodsky

5301

1 A Correct.

2 Q It wasn't related to Retrophin.

3 A It did not say Retrophin on it.

4 Q And --

5 A Sorry, can you go back to your question about my
6 involvement in it?

7 Q Well, did you inform Mr. Aslage about it?

8 A No.

9 Q Did you inform Mr. Richardson?

10 A Mr. Richardson?

11 Q You didn't -- you don't know who Steven Richardson is?

12 A Yes, Steven Richardson.

13 Q He was on the board of directors of Retrophin, right?

14 A Yes.

15 Q And you didn't need to inform Mr. Aslage or Mr.
16 Richardson because it related to MSMB, correct?

17 A No.

18 Q You just didn't do it.

19 A I just didn't do it.

20 Q You don't know one way or the other whether you should do
21 it or shouldn't do it.

22 A Correct.

23 I didn't think about it. I didn't think twice about
24 it.

25 Q But you know it was related to MSMB.

Su - cross - Brodsky

5302

1 A MSMB, yes. This was from -- I assume that it was from --

2 THE COURT: Don't assume, don't assume.

3 Q Do you remember it was not a subpoena but it was a
4 voluntary request for information in October of 2012?

5 A It was SEC letter, it was asking for information. I
6 don't know what the difference would be.

7 Q Okay. Moving forward, you --

8 THE COURT: Mr. Brodsky, how much more do you have?
9 Can you finish before lunch?

10 You said yesterday it was going to be an hour and a
11 half. How much more do you have?

12 MR. BRODSKY: Twenty minutes, fifteen minutes.

13 THE COURT: All right.

14 Do the jurors want to hang in there for twenty
15 minutes or do you want lunch.

16 THE JUROR: Sure, keep going.

17 Q Mr. Su, you then launched a lawsuit against Mr. Shkreli
18 and Retrophin, right?

19 A Does this pertain to my employment?

20 Q Yes.

21 A Yes.

22 Q And in that lawsuit that you launched, eventually it goes
23 to arbitration, right?

24 A Yes.

25 Q And it was first in state court. And in that lawsuit,

Su - cross - Brodsky

5303

1 you alleged that you wanted performance fees from MSMB, right?

2 A If that was in the suit, then it was in the suit.

3 Q You don't remember asking for 6.8 million in management
4 fees in your lawsuit based on the fact that there were
5 \$100 million in assets being managed?

6 A I don't know what the complaint says. But if it's in the
7 complaint, then that's what it was.

8 Q You don't remember asking for an additional \$1.7 million
9 based on the fact that you should get 25 percent of whatever
10 the management fees are?

11 A If it's in the suit, then it's correct.

12 Q And then in connection with arbitration, your lawyer was
13 Dan Bach, right?

14 A Yes.

15 Q And you say it's not your fault that Mr. Bach negotiated
16 a settlement without you knowing it, right?

17 A Correct -- no, hold on. Let me clarify.

18 We were going through settlement. I didn't approve
19 a settlement or a final settlement.

20 Q It's your lawyer's fault that he approved it, correct?

21 A Yes.

22 Q You're blaming your lawyer, correct, for the fact that
23 there was a settlement between you and Retrophin and
24 Mr. Shkreli, right?

25 A Based on what he said on the e-mails, he bounded me by an

Su - cross - Brodsky

5304

1 agreement. He did that, yes.

2 Q And that agreement was upheld by the arbitrator
3 eventually and meant that you were no longer the owner of
4 123,000 or so shares of Retrophin stock, correct?

5 A 126,000, yes.

6 Q And Charles Schwab, we talked about this, sued -- you
7 said Charles Schwab sued everyone, right?

8 A That's what I said, yes.

9 Q That's because you in December of 2013 told -- directed
10 them to sell all the shares; correct, yes or no?

11 A To go through the proper procedures to sell the shares
12 and sold it.

13 Q Yes or no. And then you ended up owing \$900,000 as a
14 result -- after all that as a result of Charles Schwab's
15 lawsuit and your settlement with Charles Schwab, correct?

16 A Yes, approximately.

17 Q And that -- sir, is it fair to say, do you remember in
18 connection with the litigation with the arbitration that
19 Katten Muchin defended Retrophin? Do you remember that?

20 A Sorry, which lawsuit?

21 Q Katten Muchin, the law firm.

22 A Defendant who?

23 Q Retrophin.

24 A In which lawsuit?

25 Q Your arbitration action.

Su - cross - Brodsky

5305

1 A Yes, I do remember that.

2 Q And you remember it was Howard Cotton and Michael Gordon
3 from Katten Muchin?

4 A The names ring a bell, yes.

5 Q It was not an agreement, correct?

6 A For the employment, I don't remember.

7 Q And then you filed suit. After Charles Schwab filed suit
8 against you, you filed a third-party claim against, among
9 other parties, Katten Muchin, right?

10 A Yes.

11 Q And you wanted money from Katten Muchin, right?

12 A I don't remember that.

13 Q You filed a third-party claim against them, right?

14 A Because they authorized the sale to Charles Schwab that I
15 can sell my stock.

16 Q Let's talk about that. I think yesterday you testified,
17 or the day before, that it was Evan Greebel who did that. You
18 were mistaken about that, weren't you?

19 A Katten Muchin, Evan Greebel, Evan, and Martin ran
20 Retrophin and they're the ones that say yes or no.

21 MR. BRODSKY: Move to strike, your Honor.

22 Nonresponsive, among other things.

23 MR. KESSLER: That was responsive.

24 THE COURT: It does respond to your question, but
25 you're welcome to probe him further.

Su - cross - Brodsky

5306

1 Q So, it's your testimony Mr. Greebel was an officer of
2 Retrophin; that's your testimony?

3 A I didn't say he was an officer.

4 Q He was outside counsel, right?

5 A He was outside counsel for Retrophin.

6 Q Right. And after he sent you the termination letter --

7 Correct, he sent you a termination letter on behalf
8 of Retrophin?

9 A Yes.

10 Q -- you ended up suing Katten Muchin in 2014, correct?

11 A I did sue Katten Muchin, yes.

12 Q And you lost.

13 A The lawsuit was so jumbled because of all the parties I
14 don't know if I lost. I just know that --

15 Q Do you remember Judge Edgardo Ramos of the Southern
16 District of New York issuing an opinion in the case?

17 A If he did, I don't remember reading it. And it would
18 have been handled by my lawyer.

19 Q Mr. Su, you did not read the opinion issued by Judge
20 Ramos in connection with your lawsuit?

21 A Sorry, no, I don't remember that. It was summarized to
22 me by my attorney, that's very likely scenario. But read an
23 opinion about legal terms, it's just not what I'm used to
24 doing.

25 Q Did your lawyer summarize for you that Judge Ramos

Su - cross - Brodsky

5307

1 criticized you --

2 MR. KESSLER: Objection.

3 THE COURT: Sustained.

4 Q Did you learn that Judge Ramos criticized you --

5 MR. KESSLER: Objection.

6 Q From someone other than your lawyer, did you learn that
7 Judge Ramos criticized you?

8 MR. KESSLER: Objection to the hearsay and the
9 question.

10 THE COURTROOM DEPUTY: I'll sustain the objection on
11 hearsay grounds and, also, to the extent it may tread on
12 attorney-client communications.

13 Q You knew Judge Ramos dismissed all your claims, sir,
14 correct?

15 A Don't recall. I don't know what you're referring to
16 and -- just whatever my attorney told me.

17 Q What happened to your lawsuit against Katten Muchin?

18 A I think they were not part of the party at some point.

19 Q They got dismissed, correct?

20 A I think they were was dismissed. I can't say for sure
21 what the terminology is when they weren't part of the suit
22 anymore.

23 MR. BRODSKY: One moment, your Honor.

24 (Pause in proceedings.)

25 MR. BRODSKY: No further questions, your Honor.

Su - cross - Brodsky

5308

1 THE COURT: At this point, I'll give the jurors a
2 lunch break. Please don't talk about the case. Remain open
3 minded.

4 How about you come back -- we'll dismiss you today
5 at 4:30. Can we come back by 2:20? That's about an hour.
6 Thank you very much.

7 (Jury exits.)

8 MR. KESSLER: Our plan, based on the idea there
9 would be an hour to hour and a half of cross, was to call
10 Sunil Jain next. That may still be the next witness we call,
11 but I think we're looking at not starting Mr. Jain until 2:30
12 at least. So, we need to check his travel schedule, so I just
13 want everyone to be on notice that we'll check that.

14 THE COURT: Are you going to redirect him?

15 MR. KESSLER: Yes, but not for that long.

16 THE COURT: So, there might be recross and then
17 Mr. Jain and we're adjourning at 4:30.

18 MR. KESSLER: Just because we have to now check
19 everyone's travel schedules again because of how much later
20 we'd start Mr. Jain.

21 THE COURT: Where is he traveling from?

22 MR. KESSLER: He came from the West Coast. He's
23 from Chicago. I don't know to where he's going back.

24 THE COURT: Thank you.

25 (Luncheon recess taken.)

1 AFTERNOON SESSION

2

3 (In open court; jury not present.)

4 THE COURT: All right.

5 MR. BRODSKY: With respect to the court's question
6 on the length of the defense case, with the preface that we
7 obviously would ask your Honor not to promise a defense case
8 to the jury --

9 THE COURT: Of course not.

10 MR. BRODSKY: -- we estimate five trial days and we
11 do recognize that if our client takes the witness stand then
12 that length could -- we built in some time for that. We
13 understand and recognize that a cross-examination of that
14 situation could go past five trial days. But we built in some
15 time for our client to testify, with some time for
16 cross-examination, but we understand that that -- and that
17 decision would not be made until towards the end of the
18 defense case, if we made a defense case.

19 THE COURT: The end of the government's case?

20 MR. BRODSKY: Certainly whether we put on a case
21 would be at the end of the government's case; whether or not
22 Mr. Greebel would testify would be a decision that he would
23 have to make at the end of our initial defense case.

24 THE COURT: So in terms of telling the jurors when
25 they are likely to be finished, should I tell them December

1 15?

2 MR. BRODSKY: Five days.

3 THE COURT: Five trial days after the government
4 anticipates resting. They are going to rest November 27, 28.
5 We are not sitting the 29, 30 or the first and then the five
6 trial days would be the week of December 4.

7 MR. PITLUCK: We have to build in closings and
8 deliberations, judge. The 27th is conservative, but
9 optimistic. We thought we would be on or done with Mr. Jane
10 by now. It's really hard for us to predict. I think,
11 unfortunately, December 15 is probably a pretty safe estimate.

12 Certainly at this point we don't want to give them
13 too short an estimate and have them on December 4 and December
14 8 saying this would be done and we have plans. We have to
15 give them the likely scenario. Closings and jury
16 deliberations with a five day case takes us to the 15th.

17 THE COURT: I would hate unnecessarily to, one, lose
18 a juror who's employer hears that and says they can't keep
19 paying.

20 Two, tell the parties in my civil trial that is
21 supposed to start, and has already been adjourned twice, that
22 we're going to adjourn it again, if we don't have to. I have
23 back to back criminal trials in January. So I just wish I
24 knew better. I don't know what to do. I suppose --

25 MR. BRODSKY: Could you give them a range, your

1 Honor?

2 THE COURT: I would say right now the current
3 estimate is December 15.

4 MR. BRODSKY: But that could change. There's some
5 flexibility in that.

6 MR. KESSLER: I don't think it's inappropriate to
7 let them know it might be -- I don't know if you want to say
8 significantly -- it could well be shorter than that. We
9 don't want to tell them the minimum.

10 THE COURT: I don't want to give minimums. I
11 thought we gave the maximums before. We told at most it would
12 go to week five. So here we are with possibly or likely
13 another few weeks ahead of us. I did want to call this
14 juror's employer today and I will let you know what the
15 employer says. I don't think it's fair for the juror to be
16 here and not get paid.

17 With regard to my own trial, I have a final pretrial
18 conference coming up on Monday which they are scrambling to
19 get ready for. I don't think it's fair for me to have them do
20 that if it's not going to be necessary or possible. So, I may
21 reach out for them today. But I think today then I'll tell
22 the jurors that the current estimates are December 15 and
23 we'll see where that leads us. I don't know what else we can
24 do.

25 MR. PITLUCK: Your Honor is correct. We gave them

1 this estimate. They should know what we're looking at so they
2 are not questioning it. Obviously, we can't say anything, the
3 parties.

4 MR. DUBIN: One concern we have, and I'm sure your
5 Honor has it as well, is that it's not just going to be number
6 two now, when they hear that another two weeks.

7 THE COURT: Of course it isn't. It's a reality
8 whether we tell them now or later.

9 MR. DUBIN: I agree.

10 THE COURT: They either continue to serve or they
11 can't and certainly the juror who has not been paid, would
12 like to continue serving, but she can't afford to keep serving
13 if she's not paid.

14 MR. DUBIN: We agree.

15 THE COURT: Whether we tell them now or later, the
16 reality would be the same. They are available till December
17 15 or they are not.

18 MR. PITLUCK: Your Honor, I think you mentioned this
19 before, telling them that the week after Thanksgiving we're
20 not going to be sitting those three days may go -- may help a
21 little bit or explain a little bit why -- between
22 Thanksgiving and those three days why we are going
23 significantly longer.

24 THE COURT: All right. I will tell them that. I'll
25 take the blame for that. That's fine. I don't mind doing it.

1 I certainly never anticipated this was going to happen.

2 MR. DUBIN: Do you intend to tell them at the end of
3 the day today?

4 THE COURT: Yes. Because I do have to reach out for
5 that juror's employer. She is here every day not being paid.

6 MR. DUBIN: I was unclear whether you were going to
7 do it now.

8 THE COURT: I thought at the end of the day would be
9 fine.

10 MR. DUBIN: So we know where to hide if there's a
11 revolt.

12 MR. PITLUCK: 4:30 today, your Honor?

13 THE COURT: Yes, 4:30. If the jurors are all here,
14 we'll bring them in.

15 MR. BRODSKY: There was one issue, your Honor, I did
16 want to raise. It's fine in front of Mr. Su. I looked back
17 at the rough transcript. The question I asked that prompted
18 Mr. Su I believe to say that Shkreli and Evan ran everything.
19 I believe that was nonresponsive to the question. I was
20 asking about whether or not he had testified that Evan was
21 responsible for -- yesterday -- for authorizing his sales in
22 December of 2013 and when I questioned him about that he said,
23 I think, in a nonresponsive way, Martin and Evan ran
24 everything.

25 THE COURT: He didn't say just that. We can pull it

1 out perhaps, if you have it, Mr. Brodsky. I understand he
2 said that phrase.

3 MR. BRODSKY: It's on the screen, your Honor.

4 THE COURT: Put it up so everybody can see it.

5 MR. BRODSKY: The question was: I think yesterday
6 you testified or the day before that it was Evan Greebel who
7 did that? That you were mistaken about that, weren't you?
8 And he said Katten Muchin, Evan Greebel, Evan an Martin ran
9 Retrophin. They are the ones that say yes or no.

10 The question was about whether or not Evan
11 authorized the sale of his stock. As a matter of fact, your
12 Honor, just for your information, we know it was not Evan
13 Greebel. Everybody knows it was not Evan Greebel. His
14 comment that Evan and Martin ran Retrophin and they are the
15 ones that say yes or no I don't believe it's responsive to the
16 question that I asked him that Evan Greebel did not authorize
17 that sale.

18 THE COURT: I thought the sequence of the questions
19 was starting with you filed a third-party claim against them,
20 meaning Katten, right?

21 "ANSWER: Because they authorized the sale to
22 Charles Schwab that I can sell my stock."

23 So the concept is presented by your question is the
24 filing of a third-party claim against Katten. He's saying,
25 yes, because they authorized the sale to Charles Schwab that I

1 can sell my stock.

2 "QUESTION: Let's talk about that." Meaning the
3 preceding subjects.

4 I think yesterday you testified -- I'm sorry --
5 let's talk about that. I think yesterday you testified or the
6 day before that it was Evan Greebel who did that, meaning
7 authorized the sale to Charles Schwab, that I can sell my
8 stock. You were mistaken about that, weren't you?

9 "ANSWER: Katten, Evan Greebel -- Evan and Martin
10 ran Retrophin and they are the ones that say yes or no."

11 That was responsive to his view about who authorized
12 the sale of the stock and responsive to the question about,
13 you know, why he sued Katten. That's the reason why I did
14 overrule the objection. I thought it was responsive.
15 Certainly, you are free to push him on that, if you think
16 there's more or some correction.

17 MR. BRODSKY: I understand.

18 THE COURT: I think the context of the questions you
19 were asking had to do why he sued the Katten firm and he
20 explained it was because the Katten firm authorized the sale
21 of the stock -- I'm sorry -- authorized Schwab to allow the
22 sale of stock and then the question was whether he was
23 mistaken that Evan Greebel did that based on his prior
24 testimony and the witness said Evan and Martin. That's why I
25 thought it was responsive even though I know it's not

1 necessarily what your view is of the evidence.

2 MR. BRODSKY: All right, your Honor.

3 THE COURT: On recross-examination I think we
4 should allow him to probe further, even if you don't get into
5 that on redirect.

6 MR. KESSLER: He asked the question. He got answer
7 he doesn't like. Katten did authorize the share transfer.
8 This was not Mr. Greebel. It was someone else. Mr. Greebel
9 then unauthorized it. But Mr. Su doesn't know that, as far as
10 I know. It's just what he said.

11 THE COURT: What Mr. Su says is that it was Evan
12 Greebel and Martin Shkreli. They are the ones that say yes or
13 no. Whether Katten says yes or no, in his view, it's
14 Mr. Greebel.

15 MR. BRODSKY: I understand, your Honor. Thank you,
16 your Honor.

17 THE COURT: We will get the jury.

18 MR. BRODSKY: The part where he said they ran
19 Retrophin that I was moving to strike. That seems
20 nonresponsive.

21 MR. KESSLER: Why he believes.

22 THE COURT: He's explaining his answer. How about
23 on recross-examination you say, Mr. Greebel didn't run
24 Retrophin, did he? I think we'll get a no, he did not.

25 MR. KESSLER: If he wants to ask that question.

Su - redirect - Kessler

5317

1 THE COURT: I expect the witness will say he didn't
2 run it.

3 MR. KESSLER: There was certainly plenty of
4 cross-examination after that point where he could have
5 clarified

6 JACKSON SU, resumed.

7 THE COURT: Mr. Burke, did you get squared away with
8 your state court judge?

9 MR. BURKE: It will work out, judge.

10 THE COURT: Thank you.

11 I have a quick question. Did the parties come up
12 with an acceptable briefing schedule for the post Daubert
13 hearing motions? If so, we would like to know it. We need to
14 schedule ourselves to give it plenty of attention.

15 MR. KESSLER: Can we tell you at the end of the day?

16 THE COURT: Okay.

17 (Pause.)

18 (Jury present.)

19 THE COURT: We have all our jurors back. Please
20 have a seat. Mr. Su you are still under oath. And if the
21 government would like to redirect Mr. Su they may do so.

22 MR. KESSLER: Thank you, your Honor

23 REDIRECT EXAMINATION

24 BY MR. KESSLER:

25 Q Mr. Su, you testified both on direct and

Su - redirect - Kessler

5318

1 cross-examination about a conversation you had with
2 Mr. Shkreli where he told you a plan about splitting the
3 profit of Fearnow shares that he controlled?

4 A Yes.

5 Q And I believe defense counsel asked you if you had told
6 Mr. Aselage about that conversation or that plan?

7 A Yes.

8 Q And defense counsel also asked you if you told
9 Mr. Greebel about that plan at some point?

10 A Yes.

11 Q Do you recall sending Evan Greebel an e-mail in June 2013
12 about Mr. Shkreli's control over the Fearnow shares?

13 A Please, refresh my memory.

14 Q Sure. I'm going to show you what's been marked for
15 identification -- it's actually in front of you up on the
16 witness stand. There's a loose document. It's been marked
17 for identification as Government's Exhibit 111-51?

18 Mr. Su, what I would like you to do is turn to page
19 fourteen of this document and read paragraphs 40 to 42 to
20 yourself.

21 MR. BRODSKY: Your Honor, can we put on the record
22 what the document is?

23 MR. KESSLER: I'm using it to refresh his
24 recollection. I'm happy to say that.

25 Q Mr. Su, what is the document?

Su - redirect - Kessler

5319

1 A Looks like the Charles Schwab lawsuit against myself,
2 Chun Yi George Huang, Retrophin, Inc., Standard Registrar and
3 Transfer Company, Inc. So this is the Charles Schwab
4 complaint that I referenced earlier.

5 Q Turn to page fourteen and read paragraphs 40 to 42 to
6 yourself?

7 (Pause.)

8 Q Does reading those two paragraphs refresh your
9 recollection about whether you sent Mr. Greebel an e-mail in
10 June of 2013 about control of the Fearnow stock?

11 A Yes.

12 Q Did you send Mr. Greebel an e-mail in June of 2103 about
13 Mr. Shkreli's -- strike that.

14 Did you send Mr. Greebel an e-mail in June 2013
15 about your belief of Mr. Shkreli's control of Fearnow stock?

16 A Yes.

17 Q And just focusing on what you told Mr. Greebel about that
18 subject, what did you tell Mr. Greebel about Mr. Shkreli's
19 control of Fearnow stock?

20 A I said Martin distributes shares to his friends and had
21 control of those shares and that control of Fearnow stock as
22 facilitated by Evan's firm.

23 Q Let's move to another topic?

24 You were shown an e-mail Defendant's Exhibit 111-57,
25 but we don't have to put it up, where there was assignments

Su - redirect - Kessler

5320

1 given for various tasks and then either Katten Muchin or
2 Citrin Cooperman was listed next to those tasks.

3 A Yes.

4 Q You remember that e-mail?

5 A Yes.

6 Q Did those assignments reflect your view of the legal
7 responsibilities that those various third party service
8 providers had with respect to those various tasks?

9 MR. BRODSKY: Objection to the form.

10 THE COURT: Try to rephrase it, Mr. Kessler.

11 MR. KESSLER: Sure.

12 Q When you put those names next to the various tasks, what
13 was your intention?

14 A To match up the responsibilities that each firm had
15 according to the description of the tasks.

16 Q And those were -- sorry. Responsibilities for what?

17 A Whatever the task asked for in that description.

18 Q For completing the tasks?

19 A For completing the task.

20 Q Then if you recall one of entries related to financial
21 statements and footnotes?

22 A Yes.

23 Q And I believe that Citrin Cooperman firm was next to that
24 task?

25 A Yes.

Su - redirect - Kessler

5321

1 Q And you started to explain your experience about the role
2 of attorneys and footnotes in financial statements; do you
3 recall that?

4 A Yes.

5 Q So what was the view you were trying to give?

6 MR. BRODSKY: Objection, your Honor.

7 THE COURT: This is something he started to say?
8 You're referring to his list testimony on cross-examination?

9 MR. KESSLER: He got about halfway through that.

10 MR. BRODSKY: If you look at the question, your
11 Honor, it's asking for experience as opposed to --

12 THE COURT: Do you want to just rephrase the
13 question then, Mr. Kessler, with reference to that prior
14 testimony?

15 Q Do you recall that you did not put the Katten law firm's
16 name next to that task?

17 A Yes.

18 Q Is that because you believe that a law firm plays no role
19 in the footnotes in the financial statement?

20 A No.

21 Q Now, you were asked a number of questions by defense
22 counsel about your requests for money; do you remember that?

23 A Yes.

24 Q You were shown various documents and asked whether you
25 were asking for money?

Su - redirect - Kessler

5322

1 A Yes.

2 Q At the time you stopped working for Retrophin did you
3 believe you were owed compensation pursuant to your employment
4 agreement?

5 A Yes.

6 Q And at the time you left -- strike that. At the time you
7 stopped working for Retrophin in December 2012 did you believe
8 you were entitled to certain incentive payments pursuant to
9 your employment contract?

10 A Yes.

11 Q Do you believe there's anything wrong with asking for
12 money you believe you are owed pursuant to a contract?

13 A No.

14 Q You were asked a couple of questions about what you told
15 the SEC in May of 2012. Do you remember that?

16 A Yes.

17 Q And some of those questions related to your statement
18 that Mr. Shkreli -- I'm paraphrasing -- could do what he
19 wanted with the monies for Retrophin LLC?

20 A Yes.

21 Q Was that statement that you made related to Retrophin
22 LLC?

23 A Yes.

24 Q And Retrophin LLC became Retrophin Inc. in September
25 2012?

Su - redirect - Kessler

5323

1 A Yes.

2 Q And was the note reclassification you testified about
3 after September 2012?

4 A Yes.

5 Q You were also asked a couple of questions about which
6 organization was an umbrella for which other legal entities.
7 Do you remember that?

8 A Yes.

9 Q You have open in front of you a transcript from a prior
10 proceeding. Just right in front of you. I would like you to
11 turn to page 2136. It may be open in front of you already.
12 Do you see that?

13 A Yes.

14 Q Starting on line 13, I want you to tell me if I'm reading
15 this correctly:

16 "QUESTION: Just to be clear, you perceived MSMB
17 Capital to be the umbrella firm and then there were entities
18 underneath it?

19 "ANSWER: Correct.

20 "QUESTION: And the entities were the funds that we
21 discussed?

22 "ANSWER: Correct.

23 "QUESTION: And that was separate from Retrophin,
24 correct?

25 "ANSWER: Correct."

Su - redirect - Kessler

5324

1 Mr. Su, did I read that correctly.

2 A Yes.

3 Q Was that your testimony in the prior proceeding?

4 A Yes.

5 Q If we could put up Government's Exhibit -- strike that.

6 If I could have the Elmo, I'll show you what I
7 believe is in evidence as Defense Exhibit 111-1. This is the
8 Tuesday, December 4 e-mail that you sent to Mr. Aselage at
9 12:04 a.m.

10 Do you remember this?

11 A Yes.

12 Q And you were asked some questions about this third
13 paragraph?

14 A Yes.

15 Q Was it your role to communicate with the financial firms
16 that were considering investing in Retrophin?

17 A No.

18 Q Do you see in the second sentence of this paragraph
19 there's a he -- representing Mr. Greebel -- he said he
20 represented to the investor attorney that there was no one
21 that would get paid from the money raised.

22 Do you see that?

23 A Yes.

24 Q Represented just means said, right?

25 A That's what I understand it to be.

Su - redirect - Kessler

5325

1 Q Was it your understanding that Mr. Greebel was talking to
2 the investors?

3 A Yes.

4 Q Now, in the context of this e-mail --

5 MR. BRODSKY: Your Honor, objection. I think
6 Mr. Kessler misspoke. He said investors as opposed to
7 investor attorney.

8 MR. KESSLER: Let me ask the question again so the
9 record is clear.

10 Q Mr. Su was it your understanding that Mr. Greebel was
11 speaking to the attorneys for the investors considering
12 investing in Retrophin?

13 A Yes.

14 Q In the context of this e-mail, you were also asked some
15 questions about your testimony relating to two conversations
16 you had with Mr. Greebel about the nine hundred thousand
17 dollar note.

18 Do you remember that.

19 A Yes.

20 Q And I believe your testimony was that in the second
21 conversation Mr. Greebel said -- and I'm paraphrasing --
22 that the note was okay, something like that?

23 A Yes.

24 Q And you were asked whether you had written that in an
25 e-mail or a document to anyone?

Su - redirect - Kessler

5326

1 A Correct.

2 Q If we can switch to the government laptop, I would like
3 to show you what's been marked for identification as
4 Government's Exhibit 111-32.

5 THE COURT: Can I just be clear? Are you talking
6 about the nine hundred thousand dollar note?

7 MR. KESSLER: Nine hundred thousand dollar note.

8 THE COURT: Okay.

9 MR. KESSLER: The reclassified investment.

10 THE COURT: Between MSMB and Retrophin?

11 MR. KESSLER: Yes. MSMB Healthcare.

12 Q Mr. Su, I'm showing you what's been marked for
13 identification as Government's Exhibit 111-32. Do you see
14 that?

15 A Yes.

16 Q This is an e-mail chain that culminates with your e-mail
17 to Mr. Aselage on December 4, 2012.

18 Do you see that.

19 A Yes.

20 Q And the time of this e-mail is 2:58 p.m.?

21 A Yes.

22 Q After the e-mail we just looked at?

23 A Yes.

24 Q And if you look in the first e-mail there's a series of
25 dots.

Su - redirect - Kessler

5327

1 Do you see that.

2 A Yes.

3 Q Below those dots do you include a description of a
4 conversation you had with Mr. Greebel about the nine hundred K
5 note, nine hundred thousand dollar note?

6 A Yes.

7 MR. KESSLER: I offer Government's Exhibit 111-32.

8 MR. BRODSKY: No objection, your Honor.

9 THE COURT: We receive Government's Exhibit 111-32
10 in evidence.

11 (So marked.)

12 Q Mr. Su, this e-mail actually reflects two conversations
13 you had with Mr. Greebel, is that right?

14 A Yes.

15 Q And the second conversation reflected in this e-mail is
16 below that dotted lines, is that right?

17 A Yes.

18 Q Could you read that paragraph right below the dotted
19 line?

20 A Sorry. Giving you a real time play by play. Evan just
21 called back and now says whatever amount was paid to Katten
22 and there's a discrepancy should be marked against the nine
23 hundred thousand dollar note. He said similarly situation for
24 the rent as he and Martin discussed where Retrophin has been
25 paying MSMB's rent. Too many games. I can't keep track.

Su - redirect - Kessler

5328

1 Call to discuss and walk through above.

2 Q Do you understand what marked against the nine hundred
3 thousand dollar note means?

4 A To true up against that or to offset.

5 Q So Retrophin owes \$900,000, MSMB owes some amount of
6 money to Retrophin, and you kind of somewhat cancel the debt
7 out?

8 A Yes.

9 THE COURT: You apply credits?

10 MR. KESSLER: Yes.

11 THE COURT: They are not cancelled, are they?

12 MR. KESSLER: Right. One is reduced by the other.

13 THE COURT: Why don't you ask the question.

14 Q If you scroll up, you see this top conversation refers to
15 how much, the size of the invoicing that Retrophin's received
16 for work from Katten Muchin?

17 A Yes.

18 Q So about how much money did Retrophin get billed for work
19 from Katten according to this e-mail, did Retrophin owe
20 Katten?

21 A The total invoice was six hundred fifty thousand dollars
22 according to this e-mail.

23 Q And then you wrote in the next sentence, I pointed out
24 there was a huge difference in what Retrophin Inc. paid,
25 700,000, versus what we were credited for. Evan responded

Su - redirect - Kessler

5329

1 "that's a whole completely different matter," which he
2 didn't want to get into.

3 Do you see that?

4 A Yes.

5 Q Is it your understanding that Retrophin had paid more
6 money to Katten than it had been billed?

7 A Yes.

8 Q How does that relate to the nine hundred thousand dollar
9 note discussion below?

10 A So, anything that Retrophin paid, that was not their
11 obligation to pay, would be offset by money that Retrophin
12 owed under the note to MSMB Healthcare.

13 Q So if Retrophin had paid \$50,000 more than it owed, then
14 the nine hundred thousand dollar note you subtract \$50,000,
15 right?

16 A Yes.

17 Q So Retrophin would end up owing less money?

18 A Yes.

19 (Continued on next page.)
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Su - redirect - Kessler

5330

1 BY MR. KESSLER: (Continued)

2 Q Okay. All right. We can put that document aside.

3 Finally, you were asked, I think, the first thing
4 this morning about a series of share transfer documents. Do
5 you remember that?

6 A Yes.

7 Q If we can switch back to the ELMO, please, for a minute.

8 So, this I'm showing you is Defense
9 Exhibit 111-131-1 in evidence. This is the e-mail attaching
10 those share transfer agreements, Mr. Su?

11 A Yes.

12 Q So the bottom e-mail is from Mr. Greebel to Mr. Biestek
13 with the subject, Purchase Agreements?

14 A Yes.

15 Q Is anyone else on that e-mail?

16 A No.

17 Q Then the top e-mail is from Mr. Biestek back to
18 Mr. Greebel approximately nine hours later?

19 A Yes.

20 Q Is anyone else on that e-mail?

21 A No.

22 Q And there are a number of share transfer agreements
23 attached, is that right?

24 A Yes.

25 Q Is it fair to say that except for the names and the

Su - redirect - Kessler

5331

1 amounts of shares, the purchase agreements are the same?

2 A Yes.

3 Q So let's just take a look at one.

4 So, I'm showing you what's in evidence as Defense
5 Exhibit 111-134. Do you see that?

6 A Yes.

7 Q And the purchase agreement in the first paragraph is
8 between Troy Fearnow and Timothy Pierotti?

9 A Yes.

10 Q Is Retrophin mentioned anywhere in this document?

11 A No.

12 Q Is Martin Shkreli mentioned anywhere in this document?

13 A No.

14 Q Is MSMB Capital Management LLC or LP mentioned anywhere
15 in this document?

16 A No.

17 Q Is any MSMB fund mentioned in this document?

18 A No.

19 Q Can you read the words that are in the upper right-hand
20 corner of this document on the first page?

21 A Katten Draft 12/7/12.

22 MR. KESSLER: One minute, Your Honor.

23 (Pause.)

24 MR. KESSLER: No further questions.

25

Su - recross - Brodsky

5332

1 RECROSS-EXAMINATION

2 BY MR. BRODSKY:

3 Q Just on the e-mail we were looking at, Mr. Su, 111-32 in
4 evidence, Government Exhibit 111-32 -- yes, 111-32. I think
5 it's in evidence now. If we don't have an electronic copy,
6 that's fine.

7 Mr. Su, it's the e-mail you sent about the two
8 conversations with Evan Greebel, right?

9 A Yes.

10 Q This is on December 4th. So there are two more
11 conversations that you had with Mr. Greebel?

12 A Are you referring to these two?

13 Q Yes. These are two additional conversations?

14 You testified about a conversation where you called
15 Mr. Greebel and you talked to him about the \$900,000 note but
16 he wouldn't talk to you, right? That's one?

17 A Yes.

18 Q Then you talked to him in connection with the
19 December 3rd e-mail that we looked up where you were e-mailing
20 Mr. Aselage and you said it didn't seem like he knew about it,
21 right?

22 A Yes.

23 Q That was December 3rd.

24 A Okay.

25 Q And now we've got another conversation on December 4th?

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Su - recross - Brodsky

5333

1 A Yes.

2 Q That would be the third conversation. Then we have a
3 fourth conversation down here about Evan called back and now
4 says, Whatever amount was paid to Katten and there's a
5 discrepancy, mark it against the note, right?

6 A Yes.

7 Q Now, Mr. Aselage and Mr. Shkreli didn't mark it against
8 the note, right? They didn't end up doing that?

9 A I don't recall.

10 Q Had they marked it against the note, Retrophin would have
11 paid less money out, correct?

12 A Retrophin would have paid less money to --

13 Q Well, you know Retrophin ended up paying the \$900,000
14 plus 12 percent interest?

15 A To MSMB Healthcare?

16 Q Yes. It's the \$900,000 note.

17 A Are you asking if I know that?

18 Q Yes. Do you know that?

19 Do you know one way or the other --

20 A I don't.

21 Q -- whether Retrophin ended up paying the \$900,000 plus
22 12 percent interest which was more money than they would have
23 paid had they offset the note?

24 MR. KESSLER: Objection to the form.

25 THE COURT: Try to break it down, Mr. Brodsky.

Su - recross - Brodsky

5334

1 Q Do you know one way or the other whether Mr. Shkreli and
2 Mr. Aselage had taken, Mr. Aselage or Mr. Shkreli had taken
3 Mr. Greebel's advice about marking off the note, Retrophin
4 would have ended up paying less money out on the note?

5 A I don't know.

6 Q Okay. And then you testified with respect to the
7 complaint Charles Schwab filed and it refreshed your
8 recollection about what you told Mr. Greebel in an e-mail
9 communication in June of 2013. Do you remember that just a
10 few minutes ago?

11 A Yes.

12 Q Now, sir, look at that paragraph, again, on 42 on page 14
13 of the Charles Schwab complaint. Do you have that?

14 A Yes. Sorry. What page was it?

15 Q It's on page 14, paragraph 42.

16 A Yes.

17 Q And you read it closely, right? Your e-mail, right? A
18 portion of it?

19 A Yes.

20 Q Okay. Now put it aside.

21 You were complaining, were you not, that if, if you
22 said to Mr. Greebel your stock was, in fact, restricted for
23 12 months and you couldn't sell your shares of Retrophin, then
24 you thought it was really unfair that those who had received
25 the opportunity to buy Fearnow shares were allowed to sell it

Su - recross - Brodsky

5335

1 first?

2 A I'm sorry. What was the question?

3 MR. BRODSKY: Would the court reporter read back the
4 question, please.

5 (Record read.)

6 A Yes, I complained about that.

7 Q And you knew, sir, that some of the people who had
8 received the opportunity to buy Fearnow shares were selling
9 their shares, correct?

10 A Yes.

11 Q You knew Andy Vaino, for example, was selling his shares
12 that he received as early as December 2012, correct?

13 MR. KESSLER: Objection. Beyond the scope and
14 hearsay.

15 THE COURT: I'm going to allow the question but I
16 want it rephrased.

17 Q Mr. Su?

18 MR. BRODSKY: I'm sorry. You want it rephrased,
19 Your Honor?

20 THE COURT: Yes.

21 MR. BRODSKY: I'm sorry. I didn't hear.

22 Q Mr. Su, your complaint was that some people, in June of
23 2013, to Mr. Greebel, were selling their freely tradable
24 shares that they had purchased from Troy Fearnow, right?

25 A My complaint was that I --

Su - recross - Brodsky

5336

1 Q Yes or no, sir. Yes or no, Mr. Su.

2 A No.

3 Q Your complaint was that if your stock was restricted for
4 12 months, then you felt that the people who were able to buy
5 Fearnow freely tradable shares and sell them, it would be
6 unfair?

7 A Yes.

8 Q Correct?

9 So, you understood, sir, that some of the people
10 that received the Fearnow shares, who bought them, were
11 selling their shares, right?

12 A They were selling their shares.

13 Q And two of the people that were selling their shares that
14 you knew of were Andy Vaino and Tim Pierotti?

15 A I don't recall Andy Vaino. I think I learned at some
16 point that Tim Pierotti was selling shares but I don't recall
17 Andy Vaino.

18 Q Okay. Now, that was the Charles Schwab complaint, right,
19 that they just showed you, correct?

20 A Yes.

21 MR. BRODSKY: May I approach, Your Honor?

22 THE COURT: Yes.

23 Q Let me show you Judge Ramos' opinion and order, DX 11-108
24 for identification, and this is dated, this is the opinion and
25 order by Judge Ramos. Do you see it?

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Su - recross - Brodsky

5337

1 A Yes.

2 Q And Mr. Kessler showed you the Charles Schwab complaint,
3 right, before Judge Ramos just a few short minutes ago?

4 A Yes.

5 (Continued on next page.)

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Side Bar

5338

1 Q And this is before you the opinion of Judge Ramos in that
2 case, correct?

3 MR. KESSLER: Can we have a sidebar?

4 THE COURT: We will have a sidebar.

5 One moment, please.

6 (The following occurred at side bar.)

7 MR. KESSLER: Your Honor, so I showed the witness a
8 document to refresh his recollection about an e-mail he sent.
9 I only identified the document because Mr. Brodsky asked me to
10 identify what the document was. I didn't ask any questions
11 about the Charles Schwab litigation.

12 So, showing the witness an opinion and order in
13 another litigation clearly to ask him questions about what's
14 in the opinion and order is beyond the scope and it's also
15 going to implicate the hearsay concerns we had with the
16 Rosenfeld arbitration because obviously Judge Ramos' opinion,
17 his conclusions about Mr. Su's credibility, the validity of
18 his claims, the facts related to the Fearnow share transfers,
19 that's all inadmissible hearsay.

20 THE COURT: What are you -- are you going to be
21 trying to read in part of this decision?

22 MR. BRODSKY: No.

23 MS. SMITH: But the document, in general, should
24 not -- I mean, use the document to refresh recollection. You
25 can identify it by government number without identifying what

Side Bar

5339

1 the number is. In fact, often it's inappropriate to identify
2 what the document is depending on what it is, for example,
3 Mr. Shkreli's trial transcript. You can refresh with
4 anything, a piece of paper, and, you know, the idea that the
5 name of what the document was is now in the record.

6 Because Mr. Brodsky made a request and, frankly,
7 there was no reason to put the name in, does not then let him
8 use that as a jumping off point to do a recross on something
9 that's completely unrelated as to why the document was being
10 used to refresh or the questions that were asked in connection
11 with the process of refreshing recollection which were the
12 questions about whether or not Mr. Su ever told Mr. Greebel
13 about his concern with Martin controlling the Fearnow shares
14 in writing because that was a question he got on
15 cross-examination.

16 This is incredibly far afield from that, has nothing
17 do with those questions, and unless there's something in this
18 opinion that he's going to use to refresh his recollection
19 about conversations with Mr. Greebel about Fearnow shares,
20 it's beyond the scope.

21 MR. BRODSKY: Your Honor?

22 THE COURT: Is there something in here on that
23 subject?

24 MR. BRODSKY: Well, first, Your Honor, respectfully
25 for the government, I think they're incorrect. I think you

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Side Bar

5340

1 have to identify the document and show it to the witness, at a
2 minimum, for the appellate record and you can't -- you can
3 show a piece of paper to the witness to refresh recollection,
4 you can show 3500 material, you can show any exhibit, but my
5 understanding is under the rules of evidence, you have to
6 identify the document. The jury has a right to know what's
7 refreshing the recollection.

8 Second, I haven't started asking questions, but what
9 I was going to do is the government introduced to Mister -- I
10 didn't, Mr. Kessler introduced to Mr. Su the Charles Schwab
11 complaint asking him if this portion, paragraph 42 of the
12 complaint, refreshed a recollection about Mr. Su's e-mail to
13 Mr. Greebel.

14 THE COURT: Because it's referring to Mr. Su's
15 e-mail --

16 MR. BRODSKY: Right.

17 THE COURT: -- to Mr. Greebel. So, it's Mr. Su's
18 own statement that's being used. You can't use Judge Ramos'
19 statements to, you know, confront the witness about the
20 statement.

21 MR. BRODSKY: I can use it to refresh recollection
22 just in the same way I used the Charles Schwab --

23 THE COURT: About what though, about what he told
24 Mr. Greebel?

25 MR. BRODSKY: Well, Your Honor --

Side Bar

5341

1 THE COURT: Because --

2 MR. BRODSKY: -- those go to credibility, that
3 Mr. Su is using the Charles Schwab complaint to refresh his
4 recollection about something.

5 THE COURT: About whether he sent an e-mail to
6 Mr. Greebel about a certain subject.

7 MR. BRODSKY: Correct. And I'm entitled to show
8 that he, it's his proposition, he didn't read the complaint
9 which I'm about to say and he didn't read Judge Ramos'
10 decision.

11 MR. KESSLER: None of that has anything to do with
12 the questions that were asked about the e-mail. If there is
13 something in the Judge Ramos opinion that says the e-mail
14 wasn't sent or that it says something different, that might
15 theoretically go to Mr. Su's credibility, but we're not
16 hearing that there's anything like that in this document and
17 I'm certainly not aware of it.

18 MS. SMITH: And he tried this on the cross. This is
19 just an attempt to go back into that area. It's not
20 appropriate for recross.

21 THE COURT: Well, did Judge Ramos make any findings
22 about that particular e-mail statement by Mr. Su --

23 MR. BRODSKY: Yes.

24 THE COURT: -- and say it was invalid?

25 MR. BRODSKY: Yes.

Side Bar

5342

1 THE COURT: What page, please?

2 MR. BRODSKY: It's on page six. He said that the
3 claims by Mr. Su were -- he talks about how Su and Huang
4 allege that the stock transfer order as to Su's shares had not
5 been put in place prior to December 13th, the day Schwab was
6 told Su's shares were freely transferred but that,
7 nonetheless, Retrophin falsely informed Standard that the stop
8 transfer order on Su's shares had been put in place and then
9 he says what the allegations are.

10 He says -- he goes on to say, none of this has
11 clarified the timing of the stop transfer order, the reason
12 Schwab was not told of its existence, and he goes on to say,
13 In any event, what they did was, he goes on to say,
14 inexplicably, although -- in addition, although this
15 allegation is inexplicably absent from the complaint, he's
16 laying the ground work for his finding that they, they omitted
17 information to the court about their third-party counterclaim.

18 MR. KESSLER: So, the record should now be clear
19 that there is nothing in this document about the June 30, 2013
20 e-mail.

21 MS. SMITH: This has nothing to do with Mr. Su's
22 employment agreement, whether or not the shares were there. I
23 mean, not to mention whether it was or was not included in the
24 complaint is not necessarily this witness's decision as
25 opposed to his lawyers. Even if this was a fair area for

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Side Bar

5343

1 cross, it is not a fair area for recross.

2 MR. BRODSKY: It seems to be a tradition here to be
3 blaming lawyers with Mr. Su but, Your Honor, I haven't been
4 able to give a chance to ask a question about Judge Ramos'
5 decision and I should be given a chance to ask a question in
6 connection with the document that they showed to him.

7 MR. KESSLER: Your Honor, respectfully, nothing has
8 been proffered here that suggests any question related to
9 Judge Ramos' opinion would be proper. There is nothing about
10 the single thing -- let me put it this way.

11 If I had shown Mr. Su the e-mail instead of the
12 excerpt of the e-mail from the Charles Schwab complaint, we
13 just didn't have the e-mail, this would obviously be improper.
14 So the only difference is that the document used is a
15 different document. I identified it as Government
16 Exhibit 111-51. So, the appellate record is perfectly
17 preserved even without calling it the Charles Schwab
18 complaint. I only identified it as the Charles Schwab
19 complaint because Mr. Brodsky asked me to. That's it.

20 There's nothing in the record, on the redirect,
21 nothing related to the Ramos decision, the stop transfer
22 order, December 2013, the validity of Mr. Su's claims. All I
23 did was ask him about a June 2013 document and use a document
24 to refresh his recollection.

25 MS. SMITH: Not to mention it's for a different

Side Bar

5344

1 litigation although -- it's not even the Charles Schwab
2 litigation.

3 THE COURT: The complaint?

4 MS. SMITH: The Ramos, yes.

5 THE COURT: All right. Look, I don't think that it
6 fairly addresses or calls into question the refreshed
7 recollection of an e-mail that he sent that is quoted in that
8 complaint. It was used to refresh his recollection as to
9 whether he had ever told the recipient of the e-mail certain
10 things and unless Judge Ramos made a specific finding about
11 that e-mail and its relevance to, and explains why it's
12 relevant to his decision to dismiss Mr. Su and Mr. Huang's
13 claim, I don't think it really addresses the point that the
14 government brought out on redirect which is you were
15 confronted and asked whether you ever told Mr. Greebel certain
16 facts, you didn't remember, he was then rushed, the e-mail
17 was, that he wrote was discussed in his testimony this
18 afternoon and the opinion of Judge Ramos is not really
19 directed to that point.

20 So, respectfully, I will not allow you to confront
21 Mr. Su with other parts of this opinion that may bear on Judge
22 Ramos' view of the claims themselves.

23 MR. BRODSKY: Okay.

24 THE COURT: Okay.

25 MR. BRODSKY: Your Honor, specifically challenging

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5345

1 then using the same document on paragraph 42 of the Charles
2 Schwab complaint going directly to Mr. Su's e-mail exchange
3 with June 2013, I was going to elicit whether or not it
4 refreshes his recollection that Charles Schwab stated in the
5 same, at the same time that Su's representations that
6 Retrophin shares were freely tradable were false.

7 MR. KESSLER: That has nothing do with the question
8 that was asked.

9 MR. BRODSKY: It goes directly to the e-mail.

10 MS. SMITH: It's hearsay.

11 THE COURT: It's an allegation by -- it's an
12 allegation. You know, again, this is about refreshing what he
13 did, what he said on a given day. That's a quote from the
14 e-mail that he sent.

15 MR. BRODSKY: Okay. Thank you, Your Honor.

16 THE COURT: All right.

17 (Side bar conference ends.)

18 (Continued on next page.)

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Su - recross - Brodsky

5346

1 BY MR. BRODSKY:

2 Q Mr. Su, by the time of June 2013, you had already
3 attempted to sell your shares -- you were trying to sell your
4 shares of Retrophin stock, right?

5 A Yes.

6 Q And so you tried in June of 2013 and you failed, correct?

7 A I was told no because the restriction period was
8 12 months instead of 6.

9 Q And then you ended up -- you were in litigation against
10 Retrophin and Mr. Shkreli and that's when your lawyer, without
11 you knowing, reached a settlement?

12 MR. KESSLER: Objection. Beyond the scope of the
13 redirect.

14 THE COURT: Sustained.

15 Q And your complaint on the Fearnow shares in June of 2013
16 was, once again, related to your disappointment about not
17 getting your own opportunity to buy Fearnow shares, right?

18 A No.

19 MR. BRODSKY: Can we put up Government
20 Exhibit -- yes, Government Exhibit 682-B.

21 Q When you wrote this e-mail in Government Exhibit 682 --

22 MR. BRODSKY: Can we scroll up a little bit,
23 Mr. Carter?

24 Q When you wrote this e-mail on March 5, 2013, you ended it
25 with a PS: PS, I was very disappointed you went against my

Su - recross - Brodsky

5347

1 recommendation by trusting and giving Tim help and all the
2 shares over me.

3 You said that, right, Mr. Su?

4 A Yes.

5 (Continued on next page.)

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1 MR. BRODSKY: No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. KESSLER: No, thank you.

4 THE COURT: All right. Mr. Su, you are excused.

5 Thank you. Have a safe trip back to Texas.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 THE COURT: Is the government prepared to call its
9 next witness?

10 MR. KESSLER: Yes. The government calls Sunil Jain
11 and we ask the Court's permission for just a minute or two.

12 THE COURT: Sure.

13 If any juror needs a break, now is a good time while
14 they're shuffling exhibits. Is everyone all right?

15 Okay.

16 Hello, sir. Step up to the witness stand, please.

17 THE CLERK: Raise your right hand.

18 (Witness sworn.)

19 THE CLERK: Please have a seat and please state and
20 spell your full name.

21 THE WITNESS: Sunil Jain, S-U-N-I-L, J-A-I-N.

22 THE COURT: Thank you. Please proceed, Mr. Kessler.

23 SUNIL JAIN ,

24 called as a witness, having been first duly sworn,

25 was examined and testified as follows:

Jain - direct - Kessler

5349

1 DIRECT EXAMINATION

2 BY MR. KESSLER:

3 Q Good afternoon, Mr. Jain.

4 A Good afternoon.

5 Q Where do you work?

6 A Marcum LLP.

7 Q Marcum LLP?

8 A Yes.

9 Q Is that an accounting firm?

10 A Yes.

11 Q What is your current title at Marcum LLP?

12 A Partner.

13 Q Can you briefly describe your education for us?

14 A I'm a qualified charter accountant from India and
15 Bachelor's degree in accounting and CPA.

16 Q And can you also describe your career history for us?

17 A I started my career with an Indian charter accountancy
18 firm in 1991. And after working for about a couple of years
19 over there, I went into emerging banking organization in India
20 and I've worked for about five, six years over there. And
21 then I moved down to the United States and started working
22 with a small public accounting firm for about four, five years
23 and then I joined the Marcum in 2004. And since then, I'm
24 with the Marcum.

25 Q Do you have any experience with auditing?

Jain - direct - Kessler

5350

1 A Yes, sir.

2 Q What is auditing?

3 A Auditing is a, providing kind of assurances of, like,
4 whether the financial statements are reasonable or not on to
5 the company's prepared financial statement.

6 Q You review the financial statements of a company and
7 determine if they're accurate?

8 A We review and audit the account statement to ensure there
9 are no material statement into the bank statement and they are
10 prepared in accordance with the GAAP.

11 Q What is GAAP?

12 A General accepted accounting principles in the United
13 States.

14 Q GAAP?

15 A Correct.

16 Q Are those the rules that govern the way companies account
17 for things in their financial statements?

18 A Yes.

19 Q How many audits have you participated in in your career?

20 A I cannot recount the numbers but, you know, plenty.

21 THE COURT: Can you give us an estimate?

22 THE WITNESS: I would say about 40, around 40, 50.

23 Q Now, in January 2011, was Marcum engaged as an auditor
24 for a company called Retrophin?

25 A Correct.

Jain - direct - Kessler

5351

1 Q And what kind of company was Retrophin at that time?

2 A That was a startup company. That was a startup LLC at
3 that time and wanted to go public. They were into research
4 and development of certain drugs and, I mean, this is what my
5 understanding is at that time.

6 (Continued on next page.)

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Jain - direct - Kessler

5352

1 BY MR. KESSLER:

2 Q And I believe I misspoke. Were you engaged in January
3 2012?

4 A Correct.

5 Q And so what was the scope of that initial engagement?

6 A To perform the audit of the financial statements for the
7 period from inception to December 31, 2011.

8 Q Do you have an understanding why you were being asked to
9 audit those financial statements?

10 A As I was mentioning that the company was about to go
11 public and the company's required to file an 8-K and an 8-K is
12 an audited financial statement required to be filed with the
13 SEC.

14 Q Now, did you participate in the audit of Retrophin's
15 financial statements for the fiscal year 2011?

16 A That's right.

17 Q Can you briefly describe how the auditing process worked?

18 A So in performing the audit procedures we performed
19 certain test procedures on account balances based on
20 supporting corroborative evidence. We do make an
21 understanding of the company's internal controls and based on
22 that then -- based on our test performance of those numbers
23 we provided assurance on the audit of the financial
24 statements.

25 Q And in working on the audit of Retrophin's fiscal 2011

Jain - direct - Kessler

5353

1 year end financial statements, did you interact with Martin
2 Shkreli from time to time?

3 A My interaction with Martin Shkreli during the 2011 audit
4 was very limited, maybe asking for certain documentations for
5 my audit purposes and maybe that was through the company's
6 consultant or at that time the accountant was there.

7 Q Can you describe the team that participated in this audit
8 for Marcum?

9 A It was consisting of Ed Hackert, who was my engagement
10 partner, the quality control partner was John Rushford. Then
11 I was a manager on the job. Underneath me Andrew Kleeman, he
12 was a staff and Maria Challet, she was the supervisor on the
13 engagement.

14 Q Did you interact with Evan Greebel at all during the
15 audit for the 2011 fiscal financials?

16 A I don't recall that.

17 Q Did you interact with him and the any point in time?

18 A My requirement of the documents was through the e-mails
19 and not generally with him.

20 Q As part of the process of auditing financial statements,
21 is it standard practice to seek certain representations from
22 law firms that have done work for the company?

23 A When we perform the audit procedures we generally at the
24 beginning of the audit procedures we ask the law firm to
25 provide us certain confirmations which relates to asking them

Jain - direct - Kessler

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1 if they were aware of any pending or threatening litigations.

2 We also ask in our confirmations how much the
3 company owes you. These are kind of our standard confirmation
4 letters we send to them.

5 Q You asked each law firm if there are pending or
6 threatened litigations?

7 A Yes.

8 Q And also the outstanding balances?

9 A Correct.

10 Q I would like to show you what has been marked as
11 Government's Exhibit 124-1 for identification. So you have a
12 binder in front of you. If you turn to tab one, you should
13 find Government's Exhibit 124-1. There's also a screen that
14 you can look at.

15 A Hmm.

16 Q Mr. Jain, this a letter dated July 2, 2012 from Katten
17 law firm?

18 A Yes.

19 Q Is this a letter you received in connection with the
20 audit of Retrophin's fiscal year 2011 financial statements?

21 A Yes.

22 Q There's a little red box in the upper left-hand corner of
23 the first page. Do you see that?

24 A Hmm.

25 Q That red box wasn't on the letter when you received it

Jain - direct - Kessler

5355

1 from Katten, right?

2 A No.

3 Q Is that something Marcum adds later?

4 A That's right.

5 MR. KESSLER: I offer Government's Exhibit 123-1.

6 MR. CHAN: No objection.

7 THE COURT: We receive Government's Exhibit 123-1.

8 (So marked.)

9 Q Mr. Jain, is this letter an example of the kind of
10 letters you talked about a few minutes ago?

11 A Yes.

12 Q The kind of letter where a law firm reports pending or
13 threatened litigation or outstanding balances to an auditor?

14 A Correct.

15 Q If we look at this letter and we go down to the second to
16 the last paragraph on the first page. There's a paragraph
17 that begins subject to the foregoing and to the qualifications
18 set forth in this letter?

19 A Hmm.

20 Q Is this the portion of the letter in which you would
21 expect to see a description of pending or threatened
22 litigations, if there are any?

23 A That's correct.

24 Q In the next paragraph, toward the bottom, there's a
25 discussion of matters in excess of \$5,000.

Jain - direct - Kessler

5356

1 Do you see that.

2 A Yes.

3 Q Can you explain what that means?

4 A Can I read that?

5 Q Sure?

6 (Pause.)

7 MR. CHAN: I object to the form.

8 THE COURT: He's asking if he sees it. Yes. I will
9 sustain the objection.

10 Q Mr. Jain, would you expect to see in a letter like this
11 information about pending or threatened litigations that
12 represented less than \$5,000?

13 A Less than \$5,000 would be immaterial, if the law firm is
14 not disclosing that to us, we will not consider that this is
15 something materially misstated.

16 Q Would you expect to see disclosures for matters related
17 to more than \$5,000?

18 A Yes.

19 Q Now, if you turn to the second page. Do you see on the
20 second page, the second full paragraph, there's a red box with
21 some red lines underlining the text?

22 A Yes.

23 Q Are those lines and a box that Marcum added later?

24 A Correct.

25 Q This letter reads: For the period ended December 31,

Jain - direct - Kessler

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1 2011, there were no outstanding bills for services rendered
2 and disbursements and other related charges incurred by this
3 firm on behalf of the company?

4 A Yes.

5 Q The next sentence says: As of audit date there were
6 outstanding bills in the amount of 187,237 dollars for
7 services rendered and other related charges incurred by this
8 firm on behalf of the company. Do you see that?

9 A Hmm.

10 THE COURT: May I ask you to say yes or no rather
11 than hmm.

12 THE WITNESS: Sorry.

13 A Yes.

14 Q Is this paragraph where in these representation letters
15 you would expect to see information about outstanding
16 balances?

17 A Yes.

18 Q If can we scroll down to the bottom. Do you see there's
19 a signature block?

20 A Yes.

21 Q Who signed the letter?

22 A The law firm.

23 Q Is it typical for a law firm itself to sign a letter like
24 this?

25 A Yes.

Jain - direct - Kessler

5358

1 MR. CHAN: Objection.

2 THE COURT: Well, why don't you rephrase the
3 question then.

4 Q How many of these letters like this have you reviewed in
5 your career?

6 A Every single time when I perform an audit, generally, in
7 an audit we see those letters. If I performed 40 or 50
8 audits, obviously I have seen 40 or 50 letters like that.

9 Q Do you see sometimes multiple letters like this in a
10 single audit?

11 A From the same firm or from different firms?

12 Q From different firms.

13 A Yes.

14 Q And in your experience with letters like this is it
15 typical for a law firm itself to sign the letter?

16 A That is correct.

17 Q We can set that aside?

18 Now, Mr. Jain, did Marcum complete an audit of the
19 fiscal year 2011 financial statements for Retrophin.

20 A Yes.

21 Q Take a look at what's behind tab two in your binder which
22 has been marked for identification as Government's Exhibit
23 114-5. Do you see that? Is this the audited financial
24 statements for Retrophin for the period of inception through
25 December 31, 2011?

Jain - direct - Kessler

5359

1 A Yes.

2 MR. KESSLER: I offer Government's Exhibit 114-5.

3 MR. CHAN: No objection.

4 THE COURT: We receive Government's Exhibit 114-5.

5 (So marked.)

6 Q Mr. Jain, we're looking at the first page. Do you see
7 that it says audited financial statements right in the middle?

8 A Yes.

9 Q Now, if we go to the third page of the document, there's
10 something called an independent accountant's report. Do you
11 see that?

12 A Yes.

13 Q What is that?

14 A This is an opinion from Marcum after they performed their
15 audit procedures. They give the opinion that whether the
16 financial statements are in accordance with the GAAP and are
17 not materially misstated. This is an opinion on the financial
18 statements.

19 Q Is this the opinion that Marcum issued related to these
20 audited financial statements?

21 A Yes.

22 Q We're not going to look at everything in here. I would
23 like you to turn to the very last page of the document. I
24 believe it's page twelve.

25 Do you see that?

Jain - direct - Kessler

5360

1 A Yes.

2 Q There's something that says note eight subsequent events.

3 Do you see that.

4 A Yes.

5 Q What is a subsequent event?

6 A Any events after the balance sheet date. If they have
7 occurred and required disclosure into the financial statement,
8 we call them subsequent events.

9 Q So it's the audit period -- strike that.

10 If the financial statement period goes through
11 December 31, 2011, are subsequent events, events that occurred
12 after December 31, 2011 and before the end of the audit?

13 A So subsequent events would be after December 31, 2011,
14 but before the date of the issuance of our financial
15 statement.

16 Q On this page in the first full paragraph the second
17 sentence reads: On February 1, 2012 the company issued 22,500
18 shares of class A common units, valued at \$900,000 to a
19 related party MSMB Healthcare, LP?

20 A Yes.

21 Q Does that represent an equity investment?

22 A Yes.

23 Q Now, is this disclosure or this statement something that
24 Marcum audited?

25 A Yes.

Jain - direct - Kessler

5361

1 Q Do you recall what sort of documents you reviewed to
2 verify that this equity investment had actually occurred?

3 A So we obtain a stock subscription agreement from the
4 management, which supports that there was \$900,000 of
5 investments made by MSMB Healthcare, LP into Retrophin.

6 Q So was Marcum engaged again to audit Retrophin's
7 financial statements for the 2012 fiscal year?

8 A Yes.

9 Q That's the period from January 1 2012 to December 31,
10 2012?

11 A Yes.

12 Q Was an engagement letter signed in connection with that
13 engagement?

14 A For the period from January 1, 2012 to December 31, 2012,
15 I believe that -- sorry, just thinking about it.

16 We did an engagement for a nine month quarterly
17 period ended September 30, 2012, interim review, and then we
18 had an engagement letter for year-end audit December 31, 2012.

19 Q So for the year-end audit, December 31, 2012, there was
20 an engagement letter?

21 A Yes.

22 Q If you take a look at what's behind tab four in your
23 binder and it has been marked for identification as
24 Government's Exhibit 114-13.

25 A Yes.

Jain - direct - Kessler

5362

1 Q Is this the engagement letter for the fiscal year 2012
2 audit?

3 A Yes.

4 Q This letter is dated February 27, 2013?

5 A Yes.

6 Q If you look down below the heading annual audit, the
7 first full paragraph?

8 A Yes.

9 Q The letter states: We will audit the consolidated
10 balance sheet of Retrophin, Inc., the company, as of December
11 31, 2012 and the related consolidated statements of the
12 operation, shareholder equities and cash flows for the years
13 ended which will be included --

14 MR. CHAN: He is reading from a document not in
15 evidence.

16 MR. KESSLER: I'm sorry. I offer Government's
17 Exhibit 114-13.

18 MR. CHAN: No objection.

19 THE COURT: We admit Government's Exhibit 114-13.

20 (So marked.)

21 Q Mr. Jain, if we can scroll back down to that paragraph,
22 below the heading annual audit?

23 A Yes.

24 Q This first paragraph below the heading annual audit
25 describes the scope of Marcum's audit for fiscal year 2012?

Jain - direct - Kessler

5363

1 A Yes.

2 Q There's a reference to the company's form 10-k.

3 Do you see that.

4 A Yes.

5 Q What's the relationship between the audit and the form
6 10-k?

7 A Form 10-k is a required filing for SEC registered
8 companies in which not only the audited financial statements
9 get included but then also the company's required to include
10 some of the informations required by the SEC declarations such
11 as management discussion and analysis, the company's business,
12 any risk factors. Those are the informations also included
13 within that form 10-k and get it filed with the SEC.

14 Q Turn to the second page. Focus on the third full
15 paragraph. That paragraph begins: Our audit is designed to
16 provide reasonable assurance of detecting errors or fraud that
17 would have a material effect on the financial statements taken
18 as a whole?

19 Do you see that.

20 A Yes.

21 Q So what is an auditor's role in looking for fraud at a
22 company?

23 A We are not engaged to identify or detect fraud. We are
24 engaged to give an opinion on the financial statements,
25 whether they are materially misstated or not or whether they

Jain - direct - Kessler

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1 are prepared in accordance with the GAAP.

2 Q If you look at the fourth line at the end there's a
3 sentence that reads: Our audit is not a special audit for the
4 purpose of fraud detection, nor is it a detailed check of
5 transactions of the accounting records?

6 Do you see that.

7 A Yes.

8 Q What does that mean?

9 A That means our audit is not -- we have not been engaged
10 by the company to perform any -- to perform any procedures to
11 identify or find any fraud in the company. We are not
12 forensic auditors, like we are not detecting the frauds.

13 Q If a fraud is brought to your attention, do you report
14 it?

15 A If the fraud is brought to our attention, we will report
16 it to the management or the audit company.

17 Q I want to ask you about one other sentence in this
18 paragraph. Go a few lines down. There's a discussion about
19 the risk of detecting fraud and the sentence reads: That
20 risk is substantially increased when collusion or forgery
21 exists?

22 Do you see that.

23 A Which line item? I'm sorry.

24 Q Still in the middle of the paragraph that is being
25 highlighted on your screen as well.

Jain - direct - Kessler

5365

1 A Yes.

2 Q What does it mean that the risk is substantially
3 increased when collusion or forgery exists?

4 A So my understanding on this one is when two or more
5 people get together and perpetuate a fraud intentionally, then
6 we would not be able to detect it and the risk would be more
7 for having a fraud into the company and materially misstated
8 financial statements.

9 Q It is hard to detect a fraud if it's more than one
10 person?

11 A Yes.

12 Q We can take the engagement letter down. Can you
13 generally describe the process that Marcum followed to audit
14 the 2012 financial statements for Retrophin?

15 A Yes.

16 So, at the time when we signed the engagement
17 letter, once we signed the engagement letter we provide a
18 document request list to the management and then we provide
19 them a timeline. This is a timeline we can perform the
20 procedures and this is our required document list and once you
21 are ready with the document request list our audit team can
22 come into the field and then commence the audit procedures.

23 Before our team goes into the field for performing
24 audit procedures we send to the management certain
25 confirmations which management needs to sign those

Jain - direct - Kessler

5366

1 confirmations and send it back to us so we can send those
2 confirmations out to third parties.

3 We perform the audit field work and then management
4 provides us a draft of the financial statements so we can have
5 concurrent while working on the financial statement and
6 performing the audit field work. We provide our comments on
7 to the financial statement, which management reviews our
8 comments and then they make sure that those financial
9 statements are taken care of correctly.

10 They provide us the final financial statements which
11 our partners of quality control, everyone goes through that
12 and issue an opinion on those financial statements.

13 Q Do you review various documents provided by the company
14 in accordance with the audit?

15 A In process of our field work and in reviewing the
16 financial statements, I review many documents, yes.

17 There's one thing that I must explain also. Before
18 we issue an opinion we also communicate our findings and
19 results to the audit committee that what we identified during
20 the course of our audit or our engagement and results of the
21 operations then.

22 Q In a typical audit, is one of the sets of documents you
23 review board minutes?

24 A Yes.

25 Q Do you review draft or final board minutes?

Jain - direct - Kessler

5367

1 A Combination of both.

2 Q Can you explain that?

3 A So generally when the board meets the company's
4 representative writes those minutes and upon our request they
5 provide us those minutes of the board meetings. Sometimes
6 they are signed by the secretary and sometimes they are just
7 in a draft format.

8 So we get those draft minutes from the management or
9 the signed minutes of the meeting. So we review a combination
10 of both.

11 Q What's the significance to you if the minutes are signed?

12 A If the minutes are signed, we assume that these minutes
13 are approved by the board, all the people who were sitting in
14 those meetings.

15 Q Approved by the board?

16 A Yes.

17 Q Now, during the process for auditing the 2012 financial
18 statements for Retrophin, did Marcum receive another one of
19 those legal representation letters from the Katten law firm?

20 A Yes.

21 Q Can you take a look at what is behind tab five in your
22 binder and has been marked for identification as Government's
23 Exhibit 124-2.

24 Do you see that document?

25 A Yes.

Jain - direct - Kessler

5368

1 Q The letter from the Katten law firm dated May 31, 2013?

2 A Yes.

3 Q Is a letter you received in connection with that audit of
4 the fiscal year 2012 financial statements?

5 A Yes.

6 Q Are there some more red boxes on it that Marcum added
7 later?

8 A Yes.

9 MR. KESSLER: I offer Government's Exhibit 124-2.

10 MR. CHAN: No objection.

11 THE COURT: We receive Government's Exhibit 124-2.

12 (So marked.)

13 Q Mr. Jain, if we can scroll down and again look in that
14 paragraph that starts subject to the foregoing and to the
15 qualifications set forth in this letter.

16 A Yes.

17 Q Are any current or pending or threatened litigations
18 disclosed in this letter?

19 A No.

20 Q This is a disclosure as of the date of letter, May 31,
21 2013?

22 A Yes.

23 Q Now, if we can zoom out, there are some boxes at the top?

24 A Yes.

25 Q And there's a box on the right that discusses -- that

Jain - direct - Kessler

5369

1 refers to an attorney's discussion with Ed Hackert, the
2 engagement partner on June 12, 2013.

3 Do you see that.

4 A Yes.

5 Q Does this box provide additional information that wasn't
6 available on May 31, 2013?

7 A Yes.

8 Q It refers to two employees who were suing the company for
9 eighty thousand dollars?

10 A Yes.

11 Q And the box also says the eighty thousand dollars is an
12 immaterial amount?

13 A Yes.

14 Q What does an immaterial amount mean?

15 A So when we commence our planning for the audit we
16 generally set up a benchmark for materiality, what the
17 threshold of the amount which is below that threshold is not
18 considered a material amount, and if there's some statement
19 that they are below the material amount that can still -- our
20 opinions can still be good that the financial statements are
21 not materially mistaken. Eighty thousand dollars would be
22 below the threshold and that's why we said it is not material.

23 Q If you look at the second page of the letter. Go to that
24 paragraph that discusses bills. Does the letter state that
25 there are \$642,129.21 outstanding?

Jain - direct - Kessler

5370

1 A Yes.

2 Q Take that down?

3 Now, as part of the audit of the fiscal year 2012
4 financial statements did you also review Retrophin's legal
5 expenditures.

6 A So I don't know whether we reviewed the legal invoices of
7 Katten Muchin.

8 Q Sorry. You are saying you don't know whether you
9 reviewed the invoices?

10 A Yes.

11 Q You mean the actual bills?

12 A Correct.

13 Q Did you review the expenses of Retrophin on legal fees?

14 A Can you repeat again, please?

15 Q Sure. Let me do it their way: If you take a look at
16 what is behind tab six in your binder. There's a document
17 that has been marked for identification as Government's
18 Exhibit 114-16.

19 Do you see that.

20 A Yes.

21 Q Is this an e-mail you sent on June 14, 2013?

22 A Yes.

23 Q And if you look at the second page, does the e-mail
24 attach a memorandum you prepared about Retrophin's legal fees?

25 A Yes.

Jain - direct - Kessler

5371

1 Q Did this relate to the audit of the 2012 fiscal year?

2 A Yes.

3 MR. KESSLER: I offer Government's Exhibit 114-16.

4 MR. CHAN: No objection.

5 THE COURT: We receive Government's Exhibit 114-16.

6 (So marked.)

7 Q Mr. Jain, do you see the cover e-mail here is you writing
8 to Marc Panoff?

9 A Yes.

10 Q In June 2013 who is Marc Panoff?

11 A Yes.

12 Q Who was Marc Panoff?

13 A Marc Panoff was the chief financial officer of the
14 company.

15 Q You write to Mr. Panoff: Please, let me know if you
16 agree with the attached memo and arrange to get me Evan's
17 confirmation to it for our support for bad debt expense?

18 Did you write that.

19 A Yes.

20 Q Who is the Evan that you are referring to?

21 A Evan is the legal -- SEC legal counsel of Retrophin.

22 Q Is that Evan Greebel?

23 A Yes.

24 Q You refer to a bad debt expense?

25 A Yes.

Jain - direct - Kessler

5372

1 Q What is that?

2 A So the expenses -- sorry. Certain receivables which the
3 company has on it's balance sheet and if they are not
4 recoverable we call it bad debt expenses.

5 Q A receivable is money the company expects to get?

6 A Correct.

7 Q So a bad debt expense is a receivable that the company
8 doesn't actually expect to get paid back for?

9 A If those collections are doubtful, then we call it bad
10 debt expense.

11 Q If we take a look at your memo, which is on the second
12 page of Government's Exhibit 114-16.

13 A Yes.

14 Q In the first paragraph, you write: During the year 2012
15 Retrophin paid on behalf of MSMB, a related party, an
16 aggregate amount of approximately five hundred sixty three
17 thousand dollars to Katten Muchin Rosenman for legal services.

18 Do you see that.

19 A Yes.

20 Q What is a related party?

21 A A party which is under common control of the same
22 management, like saying in this case for Retrophin if Martin
23 Shkreli is controlling Retrophin and he has a control of any
24 other entity that is called a related party in this case.

25 Q The next sentence says: MSMB is currently going under

Jain - direct - Kessler

5373

1 dissolution process and Retrophin does not expect to collect
2 the payment from MSMB.

3 Do you see that.

4 A Yes.

5 Q Accordingly, Retrophin has decided to write off 563,380
6 dollars and recorded it as bad debt expense?

7 A Yes.

8 Q Who makes the decision to write off an expense?

9 A Management of the company.

10 Q What is your role in auditing a writeoff?

11 A This is an estimate of the management of the company and
12 we rely on what management is telling us that whether we are
13 going to have a reasonable -- whether we can collect this
14 money or we will not be able to collect this money. So
15 management decides that.

16 Q Do you recall whether this amount was actually written
17 off?

18 A Yes.

19 Q Was it?

20 A It was written off, yes.

21 Q Now, during the audit of the fiscal year 2012 financial
22 statements did you have any communications with Evan Greebel
23 directly?

24 A As I mentioned before, other than asking for certain
25 documentations or agreements, contracts, there were no other

Jain - direct - Kessler

5374

1 communications I had with Evan Greebel.

2 Q Was a form 10-k filed for Retrophin for the fiscal year
3 2012?

4 A Yes.

5 Q Take a look at what's behind tab seven in your binder and
6 has been marked for identification as Government's Exhibit
7 966.

8 A Yes.

9 Q Is this the form 10-k that was filed?

10 A Yes.

11 MR. KESSLER: I offer Government's Exhibit 966.

12 MR. CHAN: I think this is already a DX number.

13 THE COURT: Can you give us the exhibit number,
14 please, Mr. Chan?

15 MR. CHAN: One moment.

16 Mr. Kessler can continue while I try to find the
17 number.

18 THE COURT: In the meantime, do you mind admitting
19 it or would you like to wait?

20 MR. CHAN: I think if I'm right, replace. We can
21 say referring to the Government's Exhibit.

22 MR. KESSLER: If we can pull up Government's Exhibit
23 966 which is also a Defendant's Exhibit.

24 Q Mr. Jain, is this an 10-k from December 2012?

25 A Yes.

Jain - direct - Kessler

5375

1 Q If you go to the page 69 of the document. We'll just put
2 it up on your screen. If you just look on your screen.

3 A Yes. I can see that.

4 Q So was this document signed on June 13, 2013?

5 A Yes.

6 Q That's approximately six months after the end of the
7 fiscal year?

8 A Yes.

9 Q If we go to page 72, a couple of pages ahead.

10 A Yes.

11 Q Are you on page 72?

12 A Yes.

13 (Continued on next page.)

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Jain - direct - Kessler

5376

1 BY MR. KESSLER:

2 Q What is on Page 72?

3 A It's our independent registered public accounting firm's
4 audit opinion on December 31, 2012, on the defense's
5 statements.

6 Q If we now turn to Page 48, see there's an item number
7 three, legal proceedings?

8 A Yes.

9 Q The legal proceedings, that section reads, We have no
10 material proceeding pending nor are we aware of any pending
11 investigation or threatened litigation by any third party.

12 A Yes.

13 Q Does Marcum play any role in auditing or verifying an
14 assertion in the legal proceedings section?

15 A This item three is not part of our financial statement,
16 which is out of our scope. But then similar -- if there is
17 some disclosure over here in item three that there are any
18 pending or threatening litigations out, there and --

19 (Pause in proceedings.)

20 A If in item three, if there's any pending or threatening
21 litigations are disclosed here, they would be disclosed into
22 footnotes of defense's statement also. Since it is not here,
23 they may not be there so we don't take responsibility of this
24 sentence over here that there are any threatening or pending
25 litigations out there.

Jain - direct - Kessler

5377

1 Q So, moving away from this particular statement, does
2 Marcum take any steps around the time that a 10-K is finalized
3 to verify the information previously received about threatened
4 or pending litigation?

5 A Yes.

6 Q What steps do you take?

7 A Before the issue of authorization to file the 10-K, we
8 ask law firm to update either through e-mail or sending us
9 another letter saying that whether they are -- there are any
10 updates to the letter which they provided us during the time
11 of the original confirmation.

12 Q So you get a final confirmation right before the 10-K is
13 filed?

14 A Correct.

15 Q Finally, if we can week turn to Page 91 of 92, Note 12
16 says subsequent events; do you see that?

17 A Yes.

18 Q Does the subsequent events here have the same meaning as
19 the subsequent events item that we previously looked at?

20 A Yes.

21 Q If you take a look, you'll see there are items in
22 January, February, and May 2013.

23 A Yes.

24 Q Take a moment and let me know if any settlement payments
25 are disclosed in this subsequent events section.

Jain - direct - Kessler

5378

1 A No.

2 Q As of June 13, 2013, when this Form 10-K had been signed,
3 had anyone brought to your attention any settlement payments
4 paid by Retrophin?

5 A No.

6 Q Had anyone brought to your attention any settlement
7 agreements entered into by Retrophin?

8 A No.

9 Q Now, after June 13, 2013 --

10 MR. CHAN: For the record, it's DX 110-64.

11 MR. KESSLER: DX 110-64 is also Government Exhibit
12 966.

13 THE COURT: Thank you, Mr. Chan. We will continue
14 to refer to this exhibit as DX 110-64.

15 MR. CHAN: Sorry, -14.

16 THE COURT: DX 110-14 is the exhibit number for this
17 particular document and we'll use that instead.

18 Q After the 10-Ks were filed, Mr. Jain, did Marcum work on
19 an audit for financial statements related to the Form 10-Q for
20 the third quarter?

21 A On the Form 10-Q, we don't perform audit, we perform
22 interim reviews.

23 Q Did you perform such an interim review?

24 A Yes.

25 Q And in July 2013, do you recall whether you received an

Jain - direct - Kessler

5379

1 additional update about pending or threatened litigation from
2 Katten?

3 A Yes, which was in connection with our quarterly review
4 March 31, 2013.

5 Q I'd like to show you what's marked for identification as
6 Government Exhibit 124-3. This is behind Tab 8 in your
7 binder.

8 Is this an e-mail you received from Marc Panoff on
9 July 24, 2013?

10 A Yes.

11 Q Does it include an update about pending or threatened
12 litigation for Retrophin?

13 A No.

14 Q If you take a look at the third e-mail from the top,
15 there's an e-mail from Marc Panoff to Evan Greebel, on
16 July 24; do you see that?

17 A On the same exhibit?

18 Q Yes. It's right on your screen there.

19 Do you see that e-mail from Marc Panoff to Evan
20 Greebel?

21 A Yes.

22 Q And above that, do you see a response from Mr. Greebel.

23 A Yes.

24 Q Do those e-mails relate to a litigation update?

25 A Yes.

Jain - direct - Kessler

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1 MR. KESSLER: I offer Government Exhibit 124-3.

2 MR. CHAN: No objection.

3 THE COURT: We receive Government Exhibit 124-3.

4 (Government Exhibit 124-3 so marked.)

5 Q The first e-mail from Marc Panoff to Evan Greebel is in
6 the middle of the page; do you see that?

7 A Yes.

8 Q Wednesday, July 24, Mr. Panoff writes to Mr. Greebel, Can
9 you please confirm that no material litigation events have
10 occurred since the last update you gave for the 10-K?

11 Do you see that?

12 A Yes.

13 Q And if we scroll up, what is Mr. Greebel's response on
14 July 24, 2013?

15 A That is correct.

16 Q And the prior response had been there were no pending or
17 threatened litigations.

18 A Yes.

19 Q And if we scroll up, Mr. Panoff then forwards
20 Mr. Greebel's response to you and other individuals and writes
21 a response to Katten.

22 A Yes.

23 Q Now, I'd asked you some questions about settlement
24 payments. At some point after this July 24, 2013, e-mail, did
25 settlement payments made by Retrophin come to your attention?

Jain - direct - Kessler

5381

1 A Yes.

2 Q How did that happen?

3 A We were engaged to perform second quarter 2013, period
4 ended June 30, 2013, interim review procedures. And interim
5 review procedures are basically making inquiries and
6 performing analytical reviews. And in performing analytical
7 review, we make request to the clients that they need to
8 provide us variance analysis of their statement of operations
9 for one period to the similar period for the last year, one
10 period from this quarter was as the last quarter, and
11 year-to-date this quarter was the year-to-date last quarter.
12 And, also, we are ask them to provide you also the variance
13 and analysis for the balance sheet.

14 THE COURT: Radiance?

15 MR. KESSLER: Variance.

16 THE COURT: Oh, variance.

17 A So, this request was sent to the company's controller and
18 CFO. I don't know whether it was controller or CFO, but we
19 send it to them. And they perform the variance analysis and
20 provide it back to us with having columns, like, going to each
21 side and then differences between one number to another number
22 and the percentages.

23 So, my staff person who received all this and, when
24 they were looking into those variances analysis, one of those
25 general and administrative expenses, they were significantly

Jain - direct - Kessler

5382

1 higher from one period to another period and my staff person
2 brought that to my attention, Sunil, this variance is
3 significantly higher from one period to another period and we
4 need to make inquiries about it.

5 Q Do you recall the difference, how much larger the current
6 year was?

7 A I don't know exact numbers, but it was in the ballpark of
8 about \$2 million, which was significantly higher. When I say
9 "significantly," that was like not in general course of the
10 business we'll see for the company like Retrophin that why
11 this significant increase was there.

12 Q So, what happened after that got brought to your
13 attention?

14 A So, he brought to my attention, and from the inquiry
15 point of view we called the company's then controller Mike
16 Harrison that we need to know why these significant variances
17 are there. He said he's not aware of this, you need to speak
18 to Marc Panoff, then CFO of the company.

19 We inquired with Marc Panoff about it, and he
20 mentioned, This has something to do with certain settlement
21 agreements and I don't know much details about it.

22 But then I said, Send me those though settlement
23 agreement. I can look into those settlement agreements and
24 then we can discuss further about it.

25 Q Did Mr. Panoff send you settlement agreements?

Jain - direct - Kessler

5383

1 A It took him maybe a couple of days to send it back to me,
2 the settlement agreements, but he did, yes.

3 Q Did you review them?

4 A I read those.

5 Q Did you prepare -- strike that.

6 At some point, did you review a spreadsheet showing
7 the individuals in the settlement agreement and the dates of
8 the agreements and the amounts of the agreements?

9 A Yes, at some point within the course of our interim
10 review, we reviewed the spreadsheet and what are the amounts
11 and who are these people who the settlement agreements are.

12 Q If you take a look at what's behind Tab 9 in your binder,
13 it's been marked for identification as Government Exhibit
14 114-25.

15 A Yes.

16 Q Is this a spreadsheet you reviewed showing the various
17 individuals involved in those settlement agreements?

18 A Yes.

19 Q And they're all also a number of marks in red; do you see
20 that?

21 A Yes.

22 Q Are those marks that Marcum added to the spreadsheet?

23 A Yes.

24 Q There's also some text at the bottom.

25 A Yes.

Jain - direct - Kessler

5384

1 Q Is that text that Marcum put on the spreadsheet?

2 A Yes.

3 Q But the black letters and numbers on the spreadsheet
4 are -- reflect the settlement payments and the individuals
5 involved in the settlement agreements.

6 A Yes.

7 MR. KESSLER: I offer Government Exhibit 114-25.

8 MR. CHAN: No objection.

9 THE COURT: We receive Government 114-25.

10 (Government Exhibit 114-25 so marked.)

11 MR. KESSLER: Ms. Balbin, if you could blow up the
12 settlement portion at the top.

13 (Exhibit published to the jury.)

14 Q Mr. Jain, there are five individuals listed under a
15 heading "shareholder;" do you see that?

16 A Yes.

17 Q Spencer Spielberg, Sarah Hassan, Richard Kocher, David
18 Geller, and Michael Lavelle?

19 A Yes.

20 Q As of July 2013, had any other settlement agreements been
21 brought to your attention?

22 A Not other than these five settlement agreements.

23 Q Did an agreement with someone named Lindsay Rosenwald
24 ever get brought to your attention?

25 A Sorry.

Jain - direct - Kessler

5385

1 Q Did an agreement with someone named Lindsay Rosenwald
2 ever get brought to your attention?

3 A No.

4 Q There's a column called "settlement date." Is that the
5 date of each settlement agreement?

6 A Yes.

7 Q Then there's a column for settlement amount; do you see
8 that?

9 A Yes.

10 Q And is that the sum of the cash and stock used for each
11 settlement payment?

12 A Yes.

13 Q The total is \$2.2 million?

14 A Yes.

15 I'm sorry, I just want make sure that because
16 settlement amount \$2.2 million and then the stock settlement
17 amount was \$80,000, total was \$2.28 million.

18 Q Thank you. I read that wrong.

19 Did you learn the entity that made the settlement
20 payment in each case?

21 A There were some payments were made, but some were
22 recorded as a liability on the books which were not made.

23 Q But some payments were made at the point you discovered
24 these and some payments had not been made?

25 A Yes.

Jain - direct - Kessler

5386

1 Q And did you come to learn that Retrophin and Martin
2 Shkreli and various MSMB entities were also party to these
3 settlement agreements?

4 A Yes.

5 Q What does it mean to restate a financial statement?

6 A When the company files their quarterly 10-Qs and 10-Ks
7 with the SEC, and if the company auditors find out that
8 financial statements which were included with those quarterly
9 or annual financial statements were incorrect or having some
10 deficiencies in disclosures, then those statements are not
11 relied upon by the investors and those financial statements
12 are to be restated with amendments.

13 Q With additional disclosures?

14 A Whatever deficiencies are there, whether disclosures or
15 updating the numbers.

16 Q So, after you discovered these settlement payments, did
17 Marcum have a view about whether Retrophin needed to restate
18 its financial statements?

19 A Yes.

20 Q What was that view?

21 A So, since these settlement amounts were significant -- or
22 I say material -- and they were not disclosed into the
23 12/31/12 audited financial statements as well as March 31,
24 2013 interim statement, our view was since these numbers are
25 material, those statements should be restated.

Jain - direct - Kessler

5387

1 Q When we talked before about related party transactions,
2 did Marcum have a view as to whether these settlement payments
3 were related party transactions?

4 A Yes.

5 Q What was that?

6 A So MSMB, Martin Shkreli, and Retrophin, all these were
7 joint and several liable for these liabilities of all these
8 settlement agreements. Whereas MSMB was the primely obliger
9 or primary entity responsible for it, whereas Retrophin was
10 paying on behalf of MSMB, so we consider that this is a little
11 departure from the action because Retrophin is paying on
12 behalf of MSMB these liabilities. So, these were considered
13 as related party transactions.

14 Q You mentioned the word "material" before. Is there a
15 materiality threshold for related party transactions?

16 A For related party transactions, in accordance with the
17 PCOB standards, there is no materiality for related party
18 transactions. Companies are required to disclose every single
19 related party transactions.

20 Q Regardless of the size of the transaction.

21 A Exactly.

22 Q Now did you communicate this view that the financial
23 statements needed to be restated to Retrophin management?

24 A Our engagement partner did communicate that to the
25 management of the company.

Jain - direct - Kessler

5388

1 Q Do you know whether that was also communicated to Evan
2 Greebel?

3 MR. CHAN: Objection, hearsay.

4 THE COURT: Why don't you rephrase?

5 Q Did you participate in any conversations involving the
6 Defendant Evan Greebel when a restatement of the financial
7 statements was discussed?

8 A I remember that there was one telephone call was there
9 between management, Evan Greebel, my firm's partners and
10 quality control already involved, and I was also being called
11 upon into that call just to hear the conversation about
12 communication of restatement and accounting in back of
13 settlement agreements.

14 Q Do you remember what the Defendant Evan Greebel said on
15 the phone call?

16 MR. CHAN: Can we get a time period for all of this?

17 Q To the best of your knowledge, Mr. Jain, when did this
18 phone call take place?

19 A Sometime while we were performing the quarterly review of
20 June 2013 10-Q, which is in the period from, I would say,
21 first week of August 2013 to the filing of the document, which
22 is, like, on September 2013.

23 Q So, what do you recall the Defendant saying?

24 A I'm sorry.

25 Q What do you recall Mr. Greebel saying?

Jain - direct - Kessler

5389

1 A I don't recall what Mr. Greebel was saying so I cannot
2 make comment on it.

3 Q Okay. Now, during the period in which these -- strike
4 that.

5 Between the time that the settlement agreements
6 first came to your attention and September 2013, were there a
7 number of discussions about the restatement of the financials?

8 A Yes.

9 Q Were there e-mails sent back and forth about this
10 restatement?

11 A As per my knowledge, yes.

12 Q Was Martin Shkreli involved in these communications?

13 A Since I was not part of those communications, I cannot
14 make a comment who were the parties involved in those
15 communications.

16 Q Now, did Retrophin -- strike that.

17 Let me ask you this first: At some point in August
18 of 2013, was there a discussion about Retrophin's internal
19 controls?

20 A I don't recollect that.

21 Q Take a look at what's behind Tab 11 in your binder. It's
22 been marked for identification as Government Exhibit 114-29-A.

23 A Yes.

24 Q You know what? Before we look further at this document,
25 another question I should have asked you before.

Jain - direct - Kessler

5390

1 You told us that after Marcum discovered these
2 settlement payments, Marcum's view was that a restatement was
3 needed; is that right?

4 A Yes.

5 Q At the time Marcum communicated that to you, did you have
6 an understanding of what Retrophin management's view was about
7 if restatement was necessary?

8 MR. CHAN: Objection hearsay.

9 THE COURT: Try to rephrase the question.

10 Q Did Retrophin's management agree to restate its
11 financials by the first week of August 2013?

12 MR. CHAN: Objection, hearsay.

13 MR. KESSLER: It's not offered for the truth.

14 MR. CHAN: I disagree.

15 THE COURT: Well, I guess we can have a little
16 sidebar and straighten it out.

17 Q Let me ask it this way: Remember, I asked you about a
18 number of communications about the restatement, the
19 restatement of the financials between July and September 2013?

20 A Yes.

21 Q Did those all relate to the question of whether and how
22 to restate the financials?

23 A As I mentioning, I was not involved with all the
24 communications, so I cannot make a comment on that, whether
25 all those communications were relating to restatement or

Jain - direct - Kessler

5391

1 something else, because I was not part of all those
2 communications.

3 But I certainly know that there was some
4 communications going on between Marcum and the management that
5 the restatements are required.

6 MR. CHAN: Your Honor, I object to the last part as
7 hearsay and move to strike based on the witness' own answer.

8 THE COURT: All right. I will grant the application
9 to strike.

10 MR. KESSLER: One minute, your Honor.

11 (Pause in proceedings.)

12 Q Mr. Jain, focusing just on communications in which you
13 were involved, communications or e-mails, do you recall
14 discussions about whether to restate Retrophin's financials?

15 A Yes.

16 Q And were all the parties in those communications
17 initially in agreement that the financial statements should be
18 restated?

19 MR. CHAN: Objection, hearsay.

20 THE COURT: Could you rephrase the question,
21 Mr. Kessler?

22 Q Did Marcum engage in work between July and September 2013
23 related to the restatement of Retrophin's financials?

24 A Yes.

25 Q And was that work the result of communications between

Jain - direct - Kessler

5392

1 Marcum and Retrophin's management?

2 A I'm sorry again, could you repeat the question, please?

3 Q Sure. Were you involved in discussions about various
4 ways in which to restate or update Retrophin's financials
5 between July and September of 2013?

6 A In some communications, yes, I was involved.

7 Q And did the views communicated to you of Retrophin's
8 management affect your work in any way?

9 A I was not at level where I can say that my work was
10 getting affected because of that, because of the management's
11 view, because I was not handling this whole issue of
12 restatement with the management. It was my partner who was
13 handling this matter. So, it's not that's something I can
14 say, that my work was getting affected with that.

15 Q All right. Take a look at what's behind Tab 11 in your
16 binder. It's been marked for identification as Government
17 Exhibit 114-29-A.

18 A On Exhibit 11?

19 Q Tab 11, Government Exhibit 114-29-A?

20 A Yeah.

21 THE COURT: We're going to break at 4:30.

22 MR. KESSLER: Understood.

23 Q Is this an e-mail you received from Mr. Panoff in
24 August 2013?

25 A Yes, I did.

Jain - direct - Kessler

5393

1 Q Does this relate to the matter in which -- strike that.

2 Does this relate to the discovery of the settlement
3 papers?

4 A Yes.

5 MR. KESSLER: I offer Government Exhibit 114-29-A.

6 MR. CHAN: No objection.

7 THE COURT: We receive Government's Exhibit
8 114-29-A.

9 (Government Exhibit 114-29-A so marked.)

10 (Exhibit published to the jury.)

11 Q Is this an e-mail from Mr. Panoff to you on August 20,
12 2013?

13 A Yes.

14 Q There's a memorandum attached; do you see that?

15 A Yes.

16 Q Two files from Retrophin, Inc.; do you see that?

17 A Yes.

18 Q Dated August 19, 2013?

19 A Yes.

20 Q Now, the first paragraph reads, After extensive
21 conversations with Martin Shkreli, the founder and chief
22 executive officer of Retrophin and the managing member of MSMB
23 Capital Management, LLC, a Delaware limited liability company,
24 an entity related to the company, and in connection with our
25 preparation of our financial statement for the quarter ended

Jain - direct - Kessler

5394

1 June 30, 2013, Retrophin determined that certain payments made
2 by the company to three individuals, pursuant to certain
3 settlement lease agreements and certain obligations accepted
4 by the company to make payments to two additional individuals
5 pursuant to certain settlement and release agreements, should
6 be reclassified as obligations that should have been borne
7 solely by MSMB and its related funds.

8 Do you see that?

9 A Yes.

10 Q Without getting into the content of any conversations,
11 were you aware that there had been extensive conversations
12 about this issue?

13 A As I mentioning, that there must be some extensive
14 conversation between the management and my firm's executives,
15 like my partners. And this memo was addressed to us, not to
16 me -- e-mail was to me, but this memo was going into my work
17 papers, which was related to Marcum. So, they're telling
18 there was an extensive discussion.

19 It's not like with me, though, any discussions.

20 MR. CHAN: I object and move to strike the entire
21 answer as speculation.

22

23 (Continued on next page.)

24

25

Jain - direct - Kessler

5395

1 MR. CHAN: The witness said that he assumes that
2 there must be.

3 THE COURT: Well, we can talk about this at side bar
4 if you'd like.

5 MR. KESSLER: I'll keep going through the memo.

6 THE COURT: All right. Can I just ask --

7 MR. KESSLER: Sure.

8 THE COURT: -- what I think I heard him say.

9 Did you say this particular memorandum was in your
10 work papers when you were conducting the work for Retrophin?

11 THE WITNESS: This memo was provided to me from the
12 then current CFO of the company to Marcum, to me, so we can
13 have this memo in our work papers.

14 THE COURT: When it was provided by the CFO, do you
15 know who that was?

16 THE WITNESS: Mark Panoff.

17 (Continued on next page.)
18
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25

1 MR. KESSLER: Your Honor, perhaps now is a good time
2 to stop for today.

3 THE COURT: Members of the jury, I am going to
4 excuse you for the day.

5 We are trying to give you a good prediction as to
6 when this case will be concluded. I know that when we
7 selected you for your service, which we are all grateful for,
8 we told you five weeks. The best estimate at this point that
9 I can give you and it may be subject to change is it would be
10 through December 15th.

11 Now, I know that some of you have raised issues with
12 us and we will be glad to address them, but I wanted to give
13 you that prediction at this time.

14 I should also add that next week, we will not be
15 sitting Thursday or Friday and the following week, the week of
16 November 27th, we will sit only Monday and Tuesday of that
17 week but not Wednesday, Thursday and Friday, that is, November
18 29th, 30th and December 1st. So, you will be free to go back
19 to your jobs or carry on your usual business on the dates that
20 we are not sitting, but that's the best prediction I can give
21 you at this time.

22 So, with that, I am going to excuse you for the day.
23 I would like to see you tomorrow morning at 9:00 again and we
24 will move forward. Thank you very much for your service and
25 your attention. Please do not talk about the case.

1 (Jury exits.)

2 THE COURT: You can be excused and step down.

3 THE WITNESS: Thank you.

4 (Witness steps down.)

5 THE COURT: All right. I just wanted to put you on
6 notice Juror Number Four has a planned business trip to China
7 at the end of this month. He would like to know whether this
8 case will still be on in advance in order for him to cancel
9 the trip. So he has been told we will still be here at the
10 end of the month so, hopefully, he will make arrangements.

11 I think it is prudent for us to give the jurors some
12 idea about where this is so they have that information now.
13 We will see what happens. I will also reach out to Juror
14 Number Two's employer and see if she can be paid and I will
15 let you know what I hear back.

16 All right. Is there anything else I should address
17 before we adjourn for the day?

18 MR. KESSLER: Just on the Daubert schedule, Your
19 Honor?

20 THE COURT: Yes.

21 MR. KESSLER: We had proposed -- we're just excusing
22 the witness.

23 THE COURT: Sorry. Juror Number One has also
24 informed that she will only be paid for four weeks so she is
25 currently without pay. We're in week five, correct?

1 Is she not being paid, Ms. Jackson?

2 Juror Number Two has not been paid but Juror
3 Number One's pay will end at the four weeks.

4 MR. DUBIN: And now, just so we're keeping track,
5 we're finishing the four-week point out, correct?

6 THE COURT: I believe we're in week five. We
7 selected our jury November 16th. So we have been here, that
8 was week one. October 25th was week two, October 30th was
9 week three, November 6th was week four and this week
10 November 13th is week five.

11 So, we have potential issues with Jurors One and Two
12 at this time. And Juror Sixteen had indicated a Thanksgiving
13 trip next week.

14 MR. KESSLER: Fourteen?

15 THE COURT: I'm sorry. Juror Fourteen?

16 THE CLERK: It was Sixteen.

17 THE COURT: Juror Sixteen had indicated a trip
18 during Thanksgiving week. She may change.

19 MR. KESSLER: On the Daubert schedule, we propose
20 that the government files Saturday and the defense files
21 Tuesday.

22 THE COURT: That's agreeable to both sides?

23 MR. CHANG: Yes, Your Honor. Thank you.

24 THE COURT: All right. Thank you.

25 (Matter adjourned to November 17, 2017 at 9 a.m.)

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1 I N D E X

2 WITNESSES:

3 JACKSON SU

4 CROSS-EXAMINATION (Continued) 5174

5 REDIRECT EXAMINATION 5317

6 RECROSS-EXAMINATION 5332

7 SUNIL JAIN

8 DIRECT EXAMINATION 5349

9

10

11 EXHIBITS:

12

13 DX 111-131-1 5175

14 DX 111-131 through 137 5175

15 DX 111-40 5196

16 DX 111-56 and DX 111-57 5215

17 DX 111-65 5230

18 DX 111-127 5230

19 DX 111-70 5230

20 DX 111-21 5240

21 DX 111-64 5240

22 DX 111-60 5255

23 DX 111-41 5274

24 DX 111-126 5279

25 DX 111-30 5282

GX 111-32 5327

GX 114-13 5362

GX 124-2 5368

GX 114-16 5371

GX 124-3 5380

GX 114-25 5384

GX 114-29-A 5393

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